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Held at the Palais Wilson, Geneva,
on Wednesday, 10 May 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.424/Add.1.

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GE.00-42081 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 CONVENTION (continued)

Initial report of the United States of America (CAT/C/28/Add.5; HRI/CORE/1/Add.49)

1. At the invitation of the Chairman, Mr. Koh, Mr. Yeoman, Mr. Surena, Mr. Campanovo, Ms. Sim and Mr. Solomon (United States of America) took places at the Committee table.

2. The CHAIRMAN invited the delegation of the United States of America to introduce its country's initial report (CAT/C/28/Add.5).

3. Mr. KOH (United States of America) said that the initial report (CAT/C/28/Add.5) had been prepared through extensive collaboration between the Department of State and the Department of Justice, with input from other departments and agencies of the executive branch and from non-governmental organizations (NGOs) and individuals.

4. The United States had long been a vigorous supporter of the international fight against torture. It had played a major role in formulating the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and considered that the Committee's mission was of great importance. The people of the United States had believed from the outset that democracy and freedom were incompatible with torture, and the eighth amendment to the United States Constitution, adopted more than two centuries previously, expressly prohibited "cruel and unusual punishments". The fourth and fifth amendments established the right to security of person and recognized a privilege against self-incrimination. Since then, those provisions had been supplemented by an extensive body of constitutional doctrine, legislation, regulations and administrative and judicial precedent, protecting every individual in the United States against torture. The United States had signed the Convention against Torture in 1992 and ratified it in 1994.

5. Torture was prohibited by law throughout the United States and outlawed as a tool of authority. In every instance, torture was a criminal offence and no category of official was authorized to commit or to instruct anyone else to commit torture. Moreover, no exceptional circumstances could be invoked as a justification for torture. Congress had enacted legislation providing for civil and criminal sanctions at the federal level against those who practised torture and the courts condemned the practice as a matter of international, federal and state law. The Alien Tort Claims Act and the Torture Victims Protection Act provided civil remedies against torturers in the United States and the federal and state executive branches pursued a policy of zero tolerance in respect of torture. In addition, the Federal Government had introduced new regulations prohibiting the extradition or refoulement of a person who was more likely than not to be tortured. The Convention was thus viewed by the United States as a treaty with far-reaching implications both for the administration of justice and for the promotion of human rights and its provisions had been firmly enshrined in both law and practice.

6. Notwithstanding the country's fine record in eliminating torture, areas of concern persisted in the United States. Allegations of torture were made from time to time, particularly in the difficult domain of law enforcement and a few recent incidents had attracted considerable attention both within and outside the United States. But the fact was that torture occurred only in aberrational situations in the United States and was never a matter of government policy. When it did occur, the perpetrators were prosecuted and the victims were fully compensated. Any act falling within the Convention's definition of torture was illegal and prosecutable throughout the country.

7. The United States was determined to make continuing progress towards the goal of eliminating torture entirely. The vibrant public debate in the country about police conduct and the situation in prisons had proved useful in that regard and any infringement was quickly brought to public attention by the active, free and independent media. Under those circumstances, and with an effective judicial system, those who still committed torture could not hope to do so with impunity. In addition, the United States Government assisted in eliminating torture worldwide, for example by compiling annual country reports on human rights situations. In the Commission on Human Rights and the General Assembly, it supported country-specific resolutions concerning torture and the work of the Special Rapporteur on torture. Where appropriate, the United States also supported the establishment of international criminal tribunals and the work of the truth commissions set up in a number of countries.

8. Ending the practice of torture was not enough; assistance should also be given to the victims. Two laws - the 1992 Torture Victims Protection Act and the 1998 Torture Victims Relief Act - had been enacted to assist torture victims who had sought refuge in the United States to obtain compensation. Since 1980, the Government had supported civil claims by torture victims under the Alien Tort Claims Act and other statutes and had worked with other countries, particularly Denmark, in support of victim relief centres in the United States and elsewhere. Extensive funding had been made available for research on torture survivors and funds amounting to some US$ 1.7 million had been provided to 10 organizations that identified torture victims among refugee communities in major cities. Moreover, assistance to victims was not confined to United States residents. The report referred to the support given by the United States Agency for International Development to programmes on behalf of torture victims throughout the world. Furthermore, the United States was the largest single donor to the United Nations Voluntary Fund for Victims of Torture, to which it had contributed US$ 3 million in 1999. Under an executive order signed in 1998, President Clinton had established a working group which was composed of representatives of, inter alia, the Departments of State, Justice, Defense and Labor and which met regularly to ensure the full implementation of international human rights instruments. In preparing the report before the Committee, the Department of State had requested information on the implementation of the Convention from the Attorneys-General of each of the 50 states. The response had been encouraging and contacts to that effect would be maintained. The Department of State also took steps to ensure that participants in the armed services' military and police training courses and importers of military equipment from the United States were not known human rights violators. That commitment had recently been reinforced by legislative measures requiring increased attention to be paid to the human rights record of security forces receiving United States assistance. The fight against torture was not simply a governmental fight, but one in which NGOs, the media, intergovernmental organizations and individuals served as valuable allies. For that reason, while the United States

Government might not always agree with the criticism it received from various organizations, it welcomed their involvement and applauded their work on behalf of torture victims and their efforts to help local authorities educate police forces about the legal and human consequences of the excessive use of force. The United States did not claim to have accomplished its mission fully and admitted that a great deal remained to be done. Having himself represented numerous torture victims before a variety of national and international forums, he pledged to engage in a frank and constructive dialogue with the Committee.

9. Mr. YEOMAN (United States of America) said that the Civil Rights Division in the Department of Justice, for which he worked, was responsible for ensuring that the United States fulfilled its obligations under the Convention and other international instruments. The Division was a member of the White House Inter-Agency Working Group on Human Rights, which included representation from the State Department, the Immigration and Naturalization Service and other agencies responsible for ensuring that the United States fulfilled its international obligations.

10. Torture was prohibited throughout the United States and no one who committed abuse while acting "under color of law" was immune from prosecution. When the Department of Justice was informed of credible allegations of abuse or mistreatment by police officers, prison guards or other State actors, an investigation was carried out and, where appropriate, the perpetrators were brought to trial. State prosecutors could also prosecute abusers. Thus, no one was above the law in that area, but continuing vigilance was necessary regarding matters such as the use of excessive force by law enforcement officers and the physical and sexual abuse of inmates. The Civil Rights Division was primarily responsible for the enforcement of federal civil rights laws, including those designed to combat discrimination on account of race, national origin, religion, sex, etc. The Division was also responsible for enforcing laws that prohibited the use of excessive force by law enforcement officers and protecting the constitutional rights of prisoners. In most cases, such federal safeguards were complemented by similar laws at the state level.

11. In the United States, it was a crime to act "under color of law" to deprive a person of a right protected by the Constitution or other legislation. The term "under color of law" referred to powers conferred at the local, state or federal level. The types of misconduct covered by such laws included the use of excessive force and sexual assault. If the Department of Justice determined that a law enforcement official had violated the federal statute concerning excessive force, the official could be criminally prosecuted in a federal court and sentenced to a term of imprisonment. At any given time, the Department of Justice was investigating several hundred allegations of police misconduct. He cited three examples of successful federal prosecutions of law enforcement officers, one concerning a New Orleans police officer and two accomplices, the second a Pelican Bay prison officer and the third, the most recent case, four New York City police officers involved in the Louima case. Moreover, law enforcement officers who committed offences of that kind could also be prosecuted at the state level and disciplinary action could be taken against them.

12. The Civil Rights Division was also responsible for the enforcement of a 1994 enactment that made it unlawful for state or local law enforcement officers to engage in a pattern of conduct that deprived persons of rights protected by the Constitution or other legislation. The types of

conduct covered by the law included the use of excessive force, discriminatory harassment, false arrests, coercive sexual conduct and unlawful stops or searches. If a law enforcement agency was found to have engaged in a pattern of misconduct, the Department of Justice could sue it in federal court to obtain injunctive relief such as orders to end the misconduct and enforced changes in the agency's procedures. Private individuals could seek similar relief and obtain compensation pursuant to other federal and state laws. He cited a number of proceedings of that nature brought by the Department of Justice against the Pittsburgh and Steubenville police forces and against the New Jersey State Police, who had been required to end the practice of racial profiling in determining whom to stop for traffic violations and subsequent searches. The Civil Rights Division was currently investigating certain police departments in connection with the use of excessive force, including the Los Angeles, New Orleans and New York City Police Departments. Its work in that area was based on the principle that it was intolerable for police officers to abuse their positions by mistreating citizens or to be motivated by racial prejudice. The Civil Rights Division also took an interest in the running of places of detention and had investigated over 300 facilities in different states and territories since the enactment of the Civil Rights of Institutionalized Persons Act in 1980. Thanks to its efforts, tens of thousands of institutionalized persons who had been living in dire conditions now received adequate care and services. The Division's work focused on protection from abuse and harm and the provision of adequate physical and mental health services and proper sanitary and fire-safety conditions. In 1997, for example, it had entered into consent decrees with certain institutions regarding the provision of medical treatment, the use of restraints and the administration of psychotropic medication to the mentally retarded. In the same year, the Division had settled a lawsuit against the Montana State Prison with an agreement that protected vulnerable inmates from predatory inmates. In recent years, its work had focused on abuse and neglect in nursing homes and juvenile establishments, the sexual victimization of women prisoners, education in facilities serving children and adolescents and the mental health of inmates and pre-trial detainees. It had to date successfully resolved the vast majority of the problems uncovered by its investigations by obtaining voluntary or judicially enforceable reforms of the facilities concerned. If state or local officials failed to correct the deficiencies or to agree to an appropriate settlement, the statute authorized the Attorney-General to file suit in a federal court.

13. A statute enacted in 1998 required the promulgation of regulations to ensure the implementation of the provisions of article 3 of the Convention by the United States. In February 1999, the Department of Justice had published an interim rule establishing procedures whereby an alien could claim protection from removal to a country where he or she would be tortured. Under the regulations, an immigration judge would consider a claim for protection under the Convention during removal proceedings. The interim rule would ensure fair and accurate decisions.

14. The CHAIRMAN, speaking as Country Rapporteur, thanked the delegation for its informative introduction and for a very comprehensive and clearly structured report, which showed that the United States had developed a whole range of legal protections that were reflected in the federal and state constitutions and the common law. The protection enjoyed by arrested persons was clearly defined and satisfactory: access to counsel, habeas corpus in all circumstances, the requirement that an arrested person should be brought before a judicial officer within a reasonable period, etc. The only point that he wished to have confirmed was that persons taken into police custody could also contact a relative and, if they wished, a doctor.

At all events, the report not only provided a very satisfactory overview of the situation with respect to legal safeguards, but also drew attention to unresolved problems, an approach that few States were prepared to adopt.

15. He inquired about the reason for the five-year delay in submitting the report (CAT/C/28/Add.5). While welcoming the fact that the State party had not entered a reservation to article 20 of the Convention, he noted with regret that it had failed to make the declaration provided for in article 22. Moreover, on ratifying the Convention, the United States had made interpretative declarations regarding the definition of torture, stating, for instance, that it understood mental torture to mean "prolonged mental harm": he wished to be enlightened as to the reasoning behind the notion of prolonged harm.

16. Articles 1 to 16 were non-self-executing and yet, according to the report, their provisions indirectly formed part of United States law. Under those circumstances, would it not be preferable to make them self-executing so that individuals could invoke them in legal proceedings?

17. The principle of non-refoulement of persons to a country where they ran the risk of being tortured had become an important aspect of the Committee's work and the State party seemed to have complied satisfactorily with its obligations under article 3 of the Convention. The Immigration and Naturalization Service had been duly acquainted with its obligations in that regard. However, according to the United States interpretation of that article, the person claiming that he should not be expelled must demonstrate that it was "more likely than not that he would be tortured" (para. 158 of the report). That was not the Committee's interpretation of the phrase "substantial grounds for believing that he would be in danger of being subjected to torture" in article 3. It held that something less than probability could, in certain circumstances, constitute a real risk. He wished to know why the State party had opted for such a strict standard, which did not reflect the Committee's jurisprudence.

18. According to the report, torture had been criminalized in every state of the Union and prosecutions could be brought for offences such as assault, assault causing grievous bodily harm, murder, etc. Some states had also introduced an aggravating element when torture was involved. But the Committee urged States parties to incorporate the definition of torture set forth in article 1 in their criminal law rather than giving their own interpretation of the concept. Without such a definition, States were not in a position to comply fully with their reporting obligations, which depended on the collection of accurate data. In addition to the fact that there was as yet no body in the United States capable of gathering such data, the structure of American democracy, based on the devolution of power to a variety of levels down to the local authorities, made the data-gathering process difficult. Moreover, to obtain coherent and useful information, the terms used must be precise, devoid of value judgements and hence based on a uniform definition.

19. Another important reason for using the wording of article 1 of the Convention was that acts constituting torture were not just assaults causing bodily harm. Torture, within the meaning of the article, involved an agent of the State deliberately inflicting severe pain for certain purposes such as the extraction of a confession. That was different, in moral terms, from the simple use of force and, when the article 1 definition was not incorporated in domestic law, that

moral dimension was, either wittingly or unwittingly, overlooked. But, to his knowledge, there was nothing in the United States Constitution to prevent the introduction of a federal crime of torture. He was therefore interested in hearing the reasons for that omission.

20. Paragraph 26 of the report listed a number of law enforcement agencies that the federal authorities were to keep informed of their obligations. However, some bodies, such as the Central Intelligence Agency (CIA), were not mentioned. It would be very interesting to learn what instructions and training were given to persons recruited by the CIA and other intelligence services regarding, for example, interrogation methods. With regard to the armed forces, he asked what action had been taken by the authorities against the practice of "hazing", involving degrading treatment and in some cases brutality.

21. In paragraph 70 of its report, the State party acknowledged the existence of police abuse, brutality and unnecessary or excessive use of force. What was alarming was the devices and techniques of restraint used, such as stun guns and stun belts. In a report to the Committee, Amnesty International described those devices in detail and indicated that serious accidents had been reported. He asked whether the administration, however brief, of an electric shock of 50,000 volts did not constitute cruel, inhuman or degrading treatment. Another alarming phenomenon was the failure to prosecute and punish police misconduct. As one of the basic objectives of the Convention was to ensure that torturers did not enjoy impunity, he wished to know what steps were being taken by the United States authorities to remedy that situation.

22. A key question he wished to put to the delegation of the State party concerned the United States position on issues of command control. According to the United States Government interpretation, the State could not be held responsible for torture unless there was some element of advance knowledge and physical control over the perpetrator.

23. Turning to articles 5 and 7 of the Convention, he noted that the United States had created an extensive jurisdictional capacity that enabled it to prosecute its citizens for acts of torture committed either within the country or abroad. It should be noted, however, that such jurisdiction also extended to acts committed by nationals of other States. He invited the State party to comment, in particular, on two cases recently reported by human rights organizations. The first concerned a Peruvian army officer who had allegedly committed numerous acts of torture in his country. Following the filing of a complaint against him in the United States, he had reportedly been arrested at Houston airport, but he had subsequently been released and authorized to leave the country on the grounds that he was entitled to immunity from prosecution. Yet according to the human rights organizations that had reported the case, the person concerned was not a diplomatic official. The question therefore arose as to why he had been accorded immunity and whether there had been a violation not only of the provisions of the Convention, but also of the rules of customary international law. Moreover, the delegation of the State party had stated that it was possible, under the Constitution, to criminalize certain acts such as piracy that constituted a breach of international law. Did torture not qualify as such an act?

24. The second case mentioned by the human rights organizations concerned a Haitian national who had allegedly tortured prisoners while serving as a senior officer of the Haitian police force under the Duvalier regime. When the person concerned had been visiting the United States, the authorities of that country had reportedly refused to extradite him to Haiti

notwithstanding urgent requests to that effect from the Haitian Government and had sent him instead to a safe place where he would be shielded from prosecution. According to the organizations that had raised the issue, the person in question had been in the pay of the CIA while serving with the Haitian police. If those reports were true, there had been a violation of the provisions of the Convention requiring all States parties to prosecute or extradite torturers. He invited the United States delegation to comment on those allegations. Furthermore, he requested confirmation of the statement in paragraph 198 of the State party's report that there had to date been no cases of extradition to another country for torture or torture-related offences.

25. With regard to article 10 of the Convention, the State party had described in detail in its report the numerous measures that had been taken both by the Federal Government and by the states in the area of education. He wished to know whether medical students received training that would enable them to detect the after-effects of torture and provide victims with the requisite care. The members of the delegation of the State party had also doubtless received a copy of the report submitted by the Special Rapporteur on torture (E/CN.4/2000/9). In paragraph 1114 of that report, the Special Rapporteur reminded the United States Government that it had not responded to a number of cases transmitted to it in 1995, 1997 and 1999. What were the reasons for its silence?

26. Mr. EL MASRY (Alternate Country Rapporteur) said he had noted with satisfaction President Clinton's decree on the application of international human rights instruments, in which the State party had undertaken to fulfil all the obligations it had assumed under the instruments it had ratified. He also noted that the United States was the principal donor to the United Nations Voluntary Fund for Victims of Torture. Nevertheless, a number of concerns remained regarding the provisions of the Convention, in particular physical and sexual violence against prisoners by prison staff and other inmates, the fact that male prison wardens had unsupervised access to women prisoners, the treatment of mentally ill persons and illegal migrants in detention, racial discrimination against members of minorities, the excessively harsh conditions and extremely stringent procedures to which persons held in "super maximum security" prisons were subjected, the ill-treatment of children in detention and the fact that the number of children placed in the same cells as adults had, according to the United States Department of Justice, more than doubled between 1995 and 1997.

27. With regard to articles 11 to 16 of the Convention, he drew attention to the detailed information contained in the report on the provisions of the United States fifth amendment concerning self-incrimination and the Supreme Court rule under which detainees were permitted to remain silent and to have a lawyer present during interrogation. According to information received by the Committee, however, there were cases in which those guarantees were not respected. Reports that children were taken into custody by the police and questioned about serious crimes without having access to counsel and in the absence of their parents were particularly alarming. Moreover, some minors had allegedly been sentenced to death following legal proceedings in which confessions they had made under duress had been used as evidence against them. The State party was required to take action to halt such practices, which were contrary to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and to guarantee protection for children who came into conflict with the law. The State party's obligations under articles 11 and 16 of the Convention should also be respected. In particular, mechanical and chemical means of restraint that were dangerous and cruel should be

prohibited and those that were not should be used only in extremis. The Committee had received an increasing number of reports of prisoners being tortured and ill-treated by means of electric shock devices. According to some sources, prisoners had actually died as a result of the use of such methods of restraint. The Committee wished to know whether the authorities had carried out an investigation to assess the effects of such devices. Was it true that 11 persons had died after being immobilized in restraint chairs and that such chairs were also used in detention centres for minors and by the Immigration and Naturalization Service?

28. Long-term solitary confinement was also a matter of concern. Over 20,000 prisoners, including many who were mentally ill, were held in so-called "super maximum security" facilities. A large number of them spent many years, or even served their entire sentence, in such facilities. It had even been alleged that prisoners were subjected to that category of imprisonment for minor infringements of disciplinary rules. Such practices, which were clearly in breach of article 16 of the Convention and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, had been denounced by international human rights bodies and, in particular, by the Special Rapporteur on torture. The State party had a duty to ensure that no prisoner was held in solitary confinement for an unduly long period. In addition, the criteria governing the assignment of prisoners to "super maximum security" facilities should be urgently reviewed.

29. The lack of independent oversight mechanisms constituted a major impediment to the conduct of impartial investigations. Most prisoners who wished to complain about the way they were being treated had to address their complaint to the prison authorities themselves. Only a few states had external supervisory bodies. As a result, the federal courts were currently the only institutions capable of ensuring effective oversight of prison conditions, but the procedure was long and unwieldy. In that connection, he wished to know whether the State party intended to set up independent oversight bodies with authority to consider complaints of ill-treatment filed by prisoners and to supervise conditions in all detention centres.

30. With regard to the application of article 14 of the Convention, the State party stated in its report that "[a] person subjected to torture within the United States has a legal right to redress and an enforceable right to fair and adequate compensation ...". But the 1996 Prison Litigation Reform Act greatly restricted prisoners' scope for suing for compensation. By requiring them to prove that they had suffered physical harm, the Act prevented them from bringing an action for psychological damage. That requirement conflicted with article 1 of the Convention, in which torture was defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted".

31. Mr. CAMARA congratulated the Government, through its delegation, on producing a particularly frank and comprehensive report. However, in keeping with the usual paradox, the more a State endeavoured to anticipate the Committee's questions, the more queries its reports tended to raise. The statement in paragraph 40 of the core document (HRI/CORE/1/Add.49) that "[t]he Constitution stands above all other laws, executive acts and regulations, including treaties" raised questions about the circumstances in which the United States fulfilled its international obligations. Paragraphs 302 and 303 of the initial report referred to the reservation made by the United States to article 16 of the Convention because of the constraints imposed by the federal

character of its system. But the subject of law in the case of an international treaty was the United States, and that subject, the Federal Government, was the Committee's interlocutor even though its competence vis-à-vis the states of the Union was limited. Moreover, according to article 27 of the Vienna Convention on the Law of Treaties, a State party to a treaty could not invoke the provisions of its internal law as justification for its failure to perform a treaty. Hence the Committee could not accept a State party's argument that its federal character prevented it from fulfilling all its obligations. Furthermore, the Convention against Torture recognized the possibility of entering reservations in only one case, that referred to in article 28 with respect to article 20. A reservation to article 16 was therefore inadmissible, since the Convention itself regulated the question of reservations and the general regime governing reservations in public international law was not applicable.

32. As the subject did not seem to have been mentioned in the report, he asked how the United States dealt with asylum-seekers on their arrival in the country. Were they detained or free to come and go as they wished?

33. Mr. SILVA HENRIQUES GASPAR welcomed the delegation of the United States and thanked the authorities for submitting such a comprehensive, detailed and frank report, reflecting the principles of openness, transparency and democracy for which the American nation was renowned. Like Mr. Camara, he was concerned about the interpretative declaration concerning article 1 of the Convention and the reservation to article 16, which related to fundamental provisions of the Convention and could have an adverse impact on its implementation.

34. With regard to overcrowding in prisons, a problem candidly described in the report, he had read in the international press that the rate of overcrowding in American prisons was 10 times greater than the highest rate recorded in European prisons and was actually 12 times greater in Texas and 16 times greater in California. While it was not part of the Committee's remit to comment on a State party's policy on crime, it certainly had a duty to emphasize the risk of ill-treatment and of inhuman or degrading treatment for prisoners, which was proportionate to any increase in the prison population. The situation was such that the United States authorities would do well to review the appropriateness of a policy on crime that resulted in an excessively high rate of imprisonment. With regard to articles 11, 12 and 13 of the Convention, he would appreciate additional information about the issue of the privatization of the prison system, again an upshot of the policy on crime. It was hard to see how the State party could exercise full supervisory authority, as required by articles 11 and 12 of the Convention, over extremely powerful private companies whose aim was, by definition, to make money.

35. He was dismayed at the reintroduction of the practice of chain gang labour for prisoners, mentioned in paragraph 334 of the report. The image of shackled convicts belonged to the nineteenth century and should now be seen only in the cinema.

36. With regard to article 16 and the scope of the United States reservation, he wondered whether the expulsion of an alien who had spent more than 40 years in the United States, starting a family and finding employment, but who had preserved a merely formal contact with the State in which he was born and had been expelled for a minor offence committed 10 years previously could not be characterized as inhuman treatment or a disproportionate penalty.

37. Lastly, he asked for information about the methods used to publicize the Convention, since he had been surprised, on attending seminars at Massachusetts and Washington law schools, to discover how little was known about the existence of the Convention against Torture and the possibility of invoking article 16.

38. Mr. YAKOVLEV said he agreed with other members of the Committee that the report covered a very wide range of issues and was openly critical, thus creating a favourable impression. The Committee was aware of the scale of the problems created by the rising crime rate in the United States. It was particularly important in that context to introduce effective countermeasures while at the same time guaranteeing full respect for human rights and legality.

39. He asked for more details about four laws recently enacted in the United States. First, with regard to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, the enormous problem of the influx of immigrants into the United States raised the question of how the State could preserve its sovereignty without infringing individual rights, especially under the Convention against Torture. The Committee had been informed that the Act failed to acknowledge that torture constituted, in itself, a sufficient ground for not returning an alien to his or her country of origin. It would welcome clarification of that point. According to some reports, the Antiterrorism and Effective Death Penalty Act severely curtailed the power of federal courts to remedy erroneous decisions by state courts, thereby jeopardizing the right to a fair trial. Additional information about the Act would be useful, since experience showed that States' reaction to terrorism, however justified, should always be accompanied by measures to guarantee a fair trial. Under the Prison Litigation Reform Act, prisoners were required to exhaust administrative remedies and provide evidence of physical harm before bringing an action before a federal court. But the Act concerned individuals who had been deprived of their liberty and who were therefore unable to explore all avenues of redress, so that the right of prisoners to file complaints was restricted. Moreover, it covered only physical harm, although mental torture could in some cases be more difficult to endure than physical torture. The Committee would appreciate clarification of that point since the United States had made its ratification of the Convention subject to a number of reservations, one of which concerned the definition of torture, which was to be understood as referring only to physical treatment. He would be grateful to the delegation for any light it could shed on that point.

40. Mr. RASMUSSEN welcomed the United States delegation and thanked the United States Government for its report, whose quality had already been commended by other members of the Committee and which described the problems with which the State party had to deal.

41. The issue of overcrowding in prisons, which had been referred to by an earlier speaker and which prevented inmates from engaging in meaningful activities such as attending courses, was closely bound up with the problem of inter-prisoner violence, which the prison authorities had a responsibility to prevent. What measures did the United States Government contemplate to address the problem? Had it considered, for example, the possibility of alternatives to imprisonment? The question of juvenile detention had already been raised, but he drew attention to the need to segregate minors from adults. "Super maximum security" facilities should be abolished as a type of imprisonment that constituted inhuman and degrading treatment and also had a serious adverse impact on mental health. Pending abolition, he would welcome figures for the number of prisoners held in such facilities and the length of their detention. It would also be

interesting to learn of the procedure whereby prisoners were condemned to such a regime, whether it was possible to return to a normal regime and at what intervals their case was reviewed. A description of the complaint procedure for inmates of "super maximum security" facilities would also be appreciated.

42. He welcomed the educational activities undertaken in implementation of article 10 of the Convention and the measures taken to rehabilitate victims of torture. He asked whether special training courses were provided for prison doctors and inquired about the procedure to be followed when they detected signs of ill-treatment inflicted by members of the police force.

43. Mr. MAVROMMATIS thanked the United States authorities for their excellent report, which was both candid and provided practical examples of the implementation of the Convention. However, the initial report had been submitted five years late and, if the periodicity laid down in the Convention was applied, the State party should have submitted its second periodic report in 1999. The United States authorities, who had no lack of competent staff for the purpose, should be able to provide good reasons to justify such a delay.

44. The United States had made a considerable contribution to the promotion and protection of human rights worldwide and achieved very good results in that area. It was therefore regrettable that it had resorted to reservations and interpretative declarations to bring the Convention against Torture into line with its own legislation instead of adopting the opposite approach and giving citizens access to the additional protection afforded by international instruments. He hoped that the United States would consider withdrawing its reservations. He also strongly urged the State party to consent at least to recognize the competence of the Committee to receive and consider communications from individuals. Such a step would enhance the protection available to its citizens and would set a good example for other States parties.

45. Mr. YU Mengjia welcomed the United States delegation and thanked it for its oral introduction. He was pleased to note that the United States was endeavouring to improve the existing situation in order to comply with the provisions of the Convention against Torture.

46. The report frankly admitted that the United States had the largest prison population in the world, but no explanation was given for that situation, whose urgency was compounded by the fact that prison overcrowding was one of the causes of torture and ill-treatment. According to information provided to the Committee, less than 1 per cent of the 12,000 complaints recorded had led to criminal prosecutions and the percentage of convictions was even lower, so that a certain amount of impunity seemed to exist in the United States. That point called for clarification. With regard to the treatment of prisoners, he had been shocked to learn that women prisoners were handcuffed when giving birth and asked whether that was the normal practice and whether the authorities planned to put an end to it. As the report described the chain gang phenomenon in detached terms, it was difficult to know whether the United States accepted the practice or viewed it as abnormal treatment. As had already been noted, the imprisonment of minors in the same premises as adults gave grounds for concern. In the report, the United States authorities blamed financial difficulties, but only poor countries were justified in using such an argument, on which he invited the delegation to comment.

47. Lastly, he suggested that the State Department's annual report on the human rights situation in individual countries should include a section on the United States, in application of the principle of universality and to enable readers to make useful comparisons.

48. The CHAIRMAN asked the United States delegation whether it could confirm NGO allegations that asylum-seekers and illegal immigrants were held in the same facilities as prisoners and sometimes even in high-security facilities. He also wished to know whether it was true that young people who had been sentenced to death when they were under 18 years of age, or at least when they were minors, since the age varied from state to state, were about to be executed. In the light of the United States interpretation of article 1 of the Convention, he asked whether, in cases where the Federal Government or the Government of a state delegated responsibility for the establishment and running of a prison to a private company, the State party considered that public officials who behaved in a manner that conflicted with the provisions of the Convention in such establishments were relieved of criminal responsibility. In conclusion, he thanked the delegation for its openness and good will, which had prompted the members of the Committee to raise a very large number of questions.

49. Mr. KOH (United States of America) said that the United States report had been submitted late because the preparation of such a report was a lengthy process. Information had been gathered from administrative and judicial bodies in all 50 states of the Federation. He hoped, however, that improved inter-agency cooperation would lead to speedier preparation of the report in future.

50. The United States was not covered in the Department of State's annual human rights report because the purpose of the report was to provide the United States, the leading donor of aid, with an annual review of the human rights situation in individual countries so that Congress could take informed decisions in that regard.

The public part of the meeting rose at 12.20 p.m.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 425th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 May 2000, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Paraguay (continued)

Initial report of El Salvador (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.425/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

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GE.00-42044 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Paraguay (continued) (CAT/C/49/Add.1)

Conclusions and recommendations of the Committee against Torture (CAT/C/XXIV/Concl. 4)

1. At the invitation of the Chairman, the members of the delegation of Paraguay took places at the Committee table.

2. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following concluding observations and recommendations:

1. The Committee considered the third periodic report of Paraguay (CAT/C/49/Add.1) at its 418th, 421st and 425th meetings, held on 5, 8 and 10 May 2000, (CAT/C/SR.418, 421 and 425), and adopted the following conclusions and recommendations.

A. Introduction

2. The third periodic report of Paraguay, submitted within the time-limit provided for in article 19 of the Convention, was not in conformity with the general guidelines regarding form and contents adopted by the Committee at its twentieth session.

3. During the introduction of the report and while hearing and replying to the comments and views of the members of the Committee, the representatives of Paraguay provided comprehensive information which made up for the report's shortcomings.

B. Positive aspects

4. The entry into force of the new Penal Code and the gradual application of the changes introduced by the new Code of Criminal Procedure, whose enforcement should enable the State better to fulfil its obligations under the Convention.

5. The innovations introduced by the Penal Code, including the extension of its application to the punishment of acts committed abroad against rights which are universally protected under an international treaty, a provision which is in keeping with article 5 of the Convention.

6. The exclusion of the probative value of any statement which is contrary to procedural guarantees provided for in the Constitution and in international law, as required by the new Code of Criminal Procedure, thus giving national courts binding jurisdiction, in accordance with article 15 of the Convention.

7. The imposition of harsh sentences for human rights violations committed during the dictatorship overthrown in 1989.

8. Programmes for the training of judges and police officers under the new criminal law system and the guarantees for which it provides.

C. Factors and difficulties impeding the application of the Convention

9. The failure to establish the Office of the Ombudsman eight years after the entry into force of the 1992 Constitution, which provided for it, and more than four years after the promulgation of the Organization Act. The Committee hopes, as the representatives of Paraguay said, that the legislative procedure for the appointment of the Ombudsman will be completed soon and that the Office of the Ombudsman will be given all the necessary resources to perform its functions throughout the national territory.

10. The lack of programmes for redress and the rehabilitation of the physical and mental health of the victims of torture, as required by article 14 of the Convention, and the legal rules which require them to file a claim for redress and compensation against the property and assets of their torturers; only if the victims are determined to be insolvent may they file their claim against the State. The Committee did not receive information on any case in which a victim of torture obtained the right to redress.

D. Principal subjects of concern

11. In the legislation in force, torture is not defined as an offence in accordance with article 1 of the Convention. The offence provided for in the new Penal Code does not include basic elements of the offence described in the Convention.

12. The information the Committee received from reliable sources that the practice of torture and cruel, inhuman or degrading treatment or punishment continues in police stations and in Armed Forces prisons and premises, where soldiers performing compulsory military service are subjected to frequent physical ill-treatment.

E. Recommendations

13. The prompt appointment of the Ombudsman and the provision of sufficient resources to enable his Office to establish its presence throughout the national territory.

14. The inclusion in the Penal Code of provisions defining torture as a crime in accordance with article 1 of the Convention.

15. The legal regulation of the right of victims of torture to redress and fair and adequate compensation at the expense of the State, which must then institute proceedings against the guilty parties in order to recover what it has had to pay out for this purpose. The State should also provide the necessary treatment for the rehabilitation of victims.

16. The Committee welcomes with satisfaction the announcement by the representatives of Paraguay that a ratification bill will soon be submitted recognizing the competence referred to in articles 21 and 22 of the Convention.

3. Mr. RAMÍREZ BOETTNER (Paraguay) thanked the members of the Committee for their open-minded approach and the frankness of their comments. Although his delegation was fully aware that Paraguay's third periodic report was not as complete as the Committee's general guidelines required, it would like the Committee to note the major difficulties his Government had faced in attempting to reflect aspects of the human rights situation in Paraguay. During a troubled period in which attempts had been made to thwart the people's determination to consolidate democracy, necessitating urgent political solutions, many of the agencies involved had simply had no time to prepare information for such reports. Furthermore, as a landlocked country Paraguay stood somewhat apart from the rest of the world, so that even the genocide which had been committed had gone largely unremarked by the international community.

4. Among the positive aspects, he welcomed the Committee's citing of the new Penal Code and Code of Criminal Procedure: immense efforts had been made to bring Paraguay's penal system into line with international standards. He took note with approval of the Committee's recommendations.

5. Turning to the subjects of concern, he was pleased to announce that in the very near future elections would be held to appoint Paraguay's first Ombudsman. In the troubled period of upheaval following the end of dictatorship, that represented a major triumph for Paraguay's political parties. The other concerns listed, namely the absence of a full definition of torture in domestic legislation consistent with article 1 of the Convention, the continuing existence of torture and cruel, inhuman and degrading treatment in police stations, prisons and the armed forces, and the absence of rehabilitation programmes for torture victims, were matters for further consideration. Congress would have the last say in approving the relevant legislation, but in the meantime he asked the Committee to bear in mind that under Paraguay's Constitution international treaties took precedence over domestic law.

6. Though Paraguay had already taken major steps to establish universal respect for human rights, it was fully aware that its future efforts would require higher levels of education and greater resources. In that regard, he emphasized that developed countries, by blocking markets and subsidizing their own exports, often denied countries such as Paraguay the opportunity to trade competitively and thus develop their own resources for such undertakings.

7. The delegation of Paraguay withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Initial report of El Salvador (continued) (CAT/C/37/Add.4)

8. At the invitation of the Chairman, the members of the delegation of El Salvador took places at the Committee table.

9. Mr. LAGOS PIZZATI (El Salvador) thanked the Committee for its appreciation of the format of his country's initial report, which was a tribute to the many bodies that had contributed to its preparation. Likewise, the Committee's recognition of El Salvador's efforts to give effect to the provisions of the Convention indicated the progress El Salvador had made in recent years in asserting and protecting human rights and in strengthening its democratic institutions. Above all, his delegation was grateful for the indications the Committee had provided of the areas in which changes to legislation and institutional practice might bring improvements. The thorough scrutiny of the initial report and of El Salvador's national legislation carried out by the Rapporteur and assistant Rapporteur, together with their perceptive comments, would greatly assist his authorities' efforts to fully implement their commitments under the Convention. No less welcome was the guidance several Committee members had provided on making future reports more complete and accessible.

10. He was afraid it would not be possible at the present stage to respond to requests for statistical information, which it would take some time to compile in collaboration with the agencies concerned but which would be transmitted to the Committee in writing as soon as possible.

11. With regard to the Rapporteur's comments on El Salvador's failure to make declarations under articles 21 and 22 of the Convention, the information available to his delegation indicated that the omission was not deliberate. In the light of the Rapporteur's comments, the delegation would recommend that the appropriate authorities should examine the question of making the declarations. His delegation also accepted the Rapporteur's analysis and arguments with regard to the conflicts that might arise when judges in El Salvador attempted to apply the definition of torture contained in domestic legislation to crimes covered by the Convention. Although it would be possible to demonstrate how the risk of such conflict could be reduced in certain cases through strict application of the rules of judicial interpretation - and El Salvador had certainly made significant progress in seeking to establish an adequate definition of torture in its legislation - his delegation accepted that the current definition left room for improvement. Accordingly, it would transmit the Committee's recommendations on the matter to the relevant authorities, with a view to amending the legislation so as to give full expression to the concept of torture contained in article 1 of the Convention.

12. In response to the Committee's comments on the absence of specific legislation dealing with refoulement in connection with article 3 of the Convention, he agreed that the inclusion of specific provisions would greatly facilitate the work of the administrative authorities in the areas concerned, although it regarded the current regulations and procedures for implementing article 3 as adequate. Moreover, since draft legislation on migration, refugees and the status of foreigners was currently being prepared, his delegation considered that it could feasibly be made to incorporate clear provisions expressly prohibiting the expulsion or return of any person to a State in which he might run the risk of being subjected to torture. An example of such legislation was the draft law on the status of refugees, soon to be transmitted to the Legislative Assembly for consideration. Chapter IX, article 47, entitled "On non-refoulement", read:

> "A refugee may not be expelled or returned to another country, be it or not his country of origin, in which his right to life, personal integrity, freedom and security are at risk of violation on grounds of race or ethnic origin, gender, religion or creed, nationality,

membership of a specific social group, or his political opinions, or because of generalized violence, foreign aggression, internal conflict, mass human rights violations or other disturbances of public order."

Given the amount of other legislation on such matters currently being prepared, the time was ripe for incorporating the Committee's recommendations on article 3 of the Convention.

13. Turning to the Committee's comments on the statistics kept by the Office of the Procurator for the Protection of Human Rights and on deficiencies in the clarification of human rights-related crimes, he said that the Procurator investigated cases in response to complaints from members of the public. The law governing the Procurator's Office, which had been in force since 1992, classified such crimes as follows: (a) torture; (b) cruel, inhuman or degrading treatment or punishment; (c) maltreatment; (d) disproportionate use of force; (e) inhuman treatment of prisoners. One of the results of an ongoing UNPD technical assistance project aimed at strengthening the functions of the Procurator for the Defence of Human Rights was a research protocol intended to establish a new classification of the human rights for whose protection the Procurator was responsible. Thus records of human rights violations, graded by degree of seriousness, which were kept by the Procurator's Office, showed that, since the 1992 peace accords, cases of torture had been diminishing rather than increasing in frequency.

14. The ending of armed conflict and the progress made in the areas of democratization and human rights since 1992 made it inappropriate to speak currently of "death squadrons" supposedly engaged in "social cleansing". On the other hand, a criminal reaction to the wave of delinquency beginning in 1996 had given rise to the self-styled "Black Shadow" group which, particularly in the east of the country, had carried out murders of delinquents and gang members. The civil police had succeeded in smashing the group and in capturing its members. Apart from the Black Shadow, there was no evidence of a resurgence of other groups carrying out vigilante activities.

15. As to whether the public prosecutor's office was the only body entitled to request a detention order, according to the Code of Criminal Procedure that was indeed the case.

16. Replying to questions raised by Mr. Silva Henriques Gaspar, he said there were ongoing mechanisms to evaluate training programmes for law enforcement officers. It was too soon, however, to assess the overall effectiveness of such programmes. Human rights training programmes for the prison system were conducted by the Prison Academy and by the regional and national Criminology Councils; their effectiveness was also monitored by those institutions. In addition, human rights awareness was included in retraining and promotion courses conducted by the National Public Security Academy.

17. The Inspector-General of the National Civil Police also conducted annual human rights awareness evaluations of police officers. The annual report described the means used to obtain such evaluations, presented the findings, and set forth general conclusions and recommendations for the National Public Security Academy and the National Civil Police. The purpose of the evaluation was to improve future performance. Some courses were conducted jointly by the National Public Security Academy and the Police Training Department.

18. A number of training courses were also administered by the European Union and the United Nations High Commissioner for Human Rights (UNHCHR), among other international bodies. The goals of the human rights technical cooperation programme conducted by UNHCHR included consolidating the public security model contained in Salvadoran law, and promoting the application of international human rights standards among law enforcement personnel. That programme involved the Ministry of Public Security, the National Civil Police, the National Public Security Academy, the Inspector-General of the National Civil Police, the Ministry of Justice, the Director-General of Prisons, and the Prison Academy.

19. The 1999 report on the impact of the technical cooperation programme on human rights in El Salvador noted that human rights training courses had had a positive effect on personnel, and had been especially useful in cultivating an understanding of women's rights. In general, the programme had had a significant impact on all the institutions involved. The number of requests received by the technical training programme for new training courses and for consultation testified to its importance.

20. Mr. Silva Henriques Gaspar had also asked whether the prison supervision courts could receive complaints from prisoners, where such complaints were filed, how they were handled, whether they were investigated, and whether disciplinary measures were applied. The prison supervision courts, recently-created judicial mechanisms, were among the most innovative instruments of that type in the world. The judges of those courts, who were fully independent of the Director-General of Prisons, were responsible for monitoring and ensuring strict compliance with the norms governing the enforcement of sentences and security measures, and with the rights of all persons deprived of their liberty.

21. There were currently 10 such courts, situated in the major cities, with jurisdiction over all places of detention. Judges were empowered to conduct periodic visits to prison facilities, and to interview prisoners who so requested. Oral or written complaints could be submitted by a prisoner or by any individual or group on his behalf. The judges were obliged to examine and resolve the complaint at an oral hearing attended by all parties, within 72 hours of its receipt. If the complaint was rejected, it could be resubmitted to the prison supervision appeal court - also a newly created mechanism.

22. If it was determined that a prisoner's rights had been violated, or that he had been subjected to an illegal measure or punishment, the judge ordered reinstatement of the complainant in his rights, notifying the Director-General of Prisons or the Ministry of the Interior, for appropriate action and disciplinary admonishment of the perpetrator of the violation.

23. Mr. MEJÍA TRABANINO (El Salvador) said that the creation of the Office of the Inspector-General of the National Civil Police had resulted from the 1992 peace agreements, and its role was to monitor and regulate the operational and administrative activities of the National Civil Police in respect of human rights. The Inspector-General was appointed by the Minister of Public Security, and must be approved by the Attorney-General and the Procurator for the Protection of Human Rights. The fact that he must be approved by two officials elected by the Legislative Assembly ensured his independence and legitimacy. The Inspector-General, who had a staff to assist him, was responsible for ensuring that police operations were professional

and technically up-to-date, that police administration was efficient and honest, and that police behaviour was correct, decent and respectful of human rights. His staff paid unannounced visits to police stations, in particular during the investigation of a human rights violation.

24. The Government had taken due note of the question raised about the outcome of torture complaints. It would consult the competent national bodies and would forward the requested information to the Committee at a later date.

25. As to whether the public were provided with sufficient and clear information on the right to submit a complaint, the Office of the Procurator for the Protection of Human Rights, the Office of the Attorney-General of the Republic and the National Department of the Family were the principal agencies responsible for disseminating human rights information to the public. In addition, the technical cooperation programme of UNHCHR had published pocket-size bulletins on human rights standards, international humanitarian standards, the Convention on the Rights of the Child, national and international laws concerning violence and discrimination against women, the Universal Declaration of Human Rights, national and international prison standards, national and international standards regarding young offenders, and international human rights standards regarding the application of laws. It had also produced educational pamphlets on rights and duties of individuals, children's rights and duties, women's rights, the principal human rights instruments in force in El Salvador, and the rights and obligations of persons deprived of their liberty and of prison staff. The delegation had brought copies for Committee members to consult.

26. Pamphlets on the rights and obligations of persons deprived of their liberty were prominently displayed in all places of detention, and clearly explained how to consult the prison supervision judges.

27. Turning to questions raised by Mr. Rasmussen, he said that the National Civil Police had medical staff which provided treatment for detainees when necessary, as for example when a detainee violently resisted arrest. If a detainee required surgical attention, he was sent to a hospital. When a detainee was transferred to facilities of the National Civil Police, he was examined to determine whether or not he had been injured. If, when he was brought before a judge, which must be done within 72 hours, he stated that he had been beaten, he was examined within the following 24 hours by a forensic medical specialist, whose findings formed the basis for judicial and administrative proceedings to determine whether he had been subjected to torture or cruel or arbitrary acts. If a detainee showed injuries or bruises, he received immediate medical attention.

28. Medical reports were filed with other medical documents; reports drawn up by the forensic medical specialist were handled in accordance with law.

29. When a detainee arrived at a prison with minor injuries, he was treated by the prison clinic, and the local police disciplinary board was so informed, in accordance with the provisions of the Prisons Act. If, however, he was seriously injured, he was taken to the nearest hospital and the Attorney-General was informed so that an appropriate investigation could be conducted.

30. With regard to the question raised about prison capacity, the relevant data would be forwarded to the Committee promptly. The Ilobasco prison had a capacity of 250 prisoners, with an admission and a temporary detention facility.

31. There was a register of cases of inter-prisoner and other violence in all prisons, and it was readily accessible.

32. Replying to questions raised by Ms. Gaer, he said that although the National Civil Police had its own organizational structure, and was the only institution providing security services throughout the country, it was supported by local police forces, which secured such public properties as markets, parks and public squares. There were also private security companies serving businesses and homes on a contractual basis. The Salvadoran armed forces carried out police duties only in exceptional circumstances, in accordance with the Constitution and subject to authorization by the President. Recently, the armed forces had begun, in a limited way, to assist the National Civil Police in combating the drug traffic and organized crime: units of one or two police officers accompanied by members of the military were carrying out rural, maritime and air operations for that purpose.

33. The recruitment and hiring of police officers was supervised by the National Public Security Academy, and selection and promotion were carried out in accordance with laws governing the National Civil Police. After an applicant had completed an academic course of nine months for beginners and one year for higher ranks, he appeared before an admissions and promotion court, which checked his criminal and behaviour records and conducted other tests. An individual who had been suspended with or without pay or dismissed or suspended from his post could not be hired by the National Civil Police.

34. The Government would forward in due course the information requested regarding persons detained as a result of the traffic in immigrants.

35. In accordance with the Code of Criminal Procedure, an accused person had the right to be immediately informed in a comprehensible manner of the reasons for his detention and advised what authority had arrested him; to choose what person or entity should be advised at once of his arrest; to be assisted by a lawyer of his choice or by a public defender; and to be brought within the legal time limit before a judge or another official authorized under the law to carry out judicial duties; to refuse to make a statement; not to be subjected to actions that infringed on his dignity; not to be subjected to methods or techniques that interfered with his free will; not to be subjected to measures that inhibited his necessary freedom of movement at the place and during the time of the trial, except in cases where special supervisory measures were determined to be necessary by the judge or prosecutor; and, if he did not speak Spanish, to be assisted by an interpreter.

36. The accused must be immediately informed of those rights in a comprehensible manner by prosecutors, judges or police, who must record that they had done so. That measure was the exclusive responsibility of the prosecutor directing the investigation or of the judge, as the case might be.

37. The Code of Criminal Procedure also provided that police officers or agents must, when making arrests, strictly conform to certain standards of conduct. They must not use force, except when strictly necessary and only as needed to make the arrest; not use arms, except if the accused resisted in a way that threatened the life or physical integrity of persons or if so required to prevent the commission of another crime; not inflict, encourage or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, during arrest or detention; and not display detainees publicly in a way that infringed on their dignity. In addition, at the time of arrest they must identify themselves as police officers and verify the identity of the person or persons they were arresting, except in the case of a person caught in flagrante delicto. At the time of the arrest, they must inform the person of all of his rights; immediately inform the family or friends of the accused of the place of detention; and enter the place, date, and hour of the detention in a permanent register. In addition, they must comply with standards of conduct prescribed in other laws.

38. As to whether cases of sexual violence in prison were monitored, whether any person had been convicted of such a crime, and whether there were any awareness programmes for handling women victims, the Government would supply answers at a later date.

39. Finally, the Salvadoran Government would also provide a written text of its replies, including any additional information it deemed useful.

40. The delegation of El Salvador withdrew.

The public part of the meeting rose at 4.25 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 426th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 11 May 2000, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of the Netherlands

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.426/Add.1.

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GE.00-42194 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of the Netherlands (CAT/C/44/Add.8 and HRI/CORE/1/Add.66: European part of the Kingdom; CAT/C/44/Add.4 and HRI/CORE/1/Add.67 and Add.68: Netherlands Antilles and Aruba)

1. Mr. Dumoré, Mr. Böcker, Mr. Henk-Cor van der Kwast, Mr. Struyker-Boudier, Mr. Niehoff, Mr. de Boer, Mr. van Daal, Ms. Martijn, Ms. de Bode-Olton and Ms. de Roos-Schoenmakers (Netherlands) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of the Netherlands and invited it to introduce the report dealing with the European part of the Kingdom (CAT/C/44/Add.8). The report dealing with the Netherlands Antilles and Aruba would be considered later.

3. Mr. DUMORÉ (Netherlands) said that the large delegation reflected the importance that the Government attached to compliance with its obligations under the Convention in a country composed of three separate entities. The Netherlands Government reiterated its full commitment to the fight against torture and all other inhuman or degrading treatment and its resolve to maintain the highest possible standards of human rights protection, especially for the more vulnerable members of society. Internationally, the Netherlands Government had always strongly supported the work of those who exposed acts of torture by Governments and had always spoken out against them itself. It supported the work of the Special Rapporteur on torture and was still the largest contributor to the United Nations Voluntary Fund for Victims of Torture. It applauded the Committee's work and advocated closer contacts between the Committee and the Special Rapporteur on torture. It was furthermore willing to enter into negotiations on an optional protocol to the Convention with a view to establishing a preventive system of visits to places of detention. The adoption of the Statute of the International Criminal Court had been welcomed in the Netherlands, which was to host the Court.

4. With regard to the implementation of article 3 of the Convention, the Committee against Torture had received and considered five communications from individuals under article 22 of the Convention during the period 1994-1998. The authors of the communications had all alleged violations of article 3 of the Convention by the Netherlands; an expulsion order having been issued against them, they had all claimed that they would run the risk of being tortured if returned to their countries. The Committee had declared one communication inadmissible. It had declared two others admissible and requested the Government to take interim measures under rule 108 of its rules of procedure, a request that the Government had honoured. On considering the merits, the Committee had found that there had been no violation of article 3. In one case only, the Committee had, in November 1998, found a potential violation of the Convention and the Government, acting on its views, had refrained from expelling the author, whose expulsion had in any case been postponed pursuant to rule 108 of the rules of procedure. In one final case that had attracted considerable press coverage and had led to a discussion in Parliament, the Netherlands Government had not responded favourably to the Committee's

request for interim measures pursuant to rule 108 and had decided to proceed with the expulsion of the author because of the finding, on judicial review, that his application for refugee status had been manifestly unfounded. While reiterating its policy of acceding, in principle, to the Committee's requests to suspend expulsion, the Netherlands Government nevertheless considered that, in the case in question, it was important to exercise effective control of the external borders of the countries that had signed the Schengen Agreement. It should be noted, however, that the author of the communication was still in the country and his whereabouts were unknown, a fact that had prompted the Committee to discontinue its consideration of the communication. The Netherlands was also a party to the European Convention on Human Rights and the European Court of Human Rights had thus far found no violation by the Netherlands of article 3 of that Convention. It followed that there was a clear need for the two petition mechanisms - the international body and the European body - to reach some measure of agreement on their interpretation of the rules, since it was essential for asylum-seekers and European Governments to know the exact limits of the protection provided by international law. But the case law of the two mechanisms differed in terms of the extent to which the burden of proof lay with the State party.

5. With regard to the application of article 7, he reminded the Committee that, during its consideration of the preceding report (CAT/C/25/Add.1), the Netherlands delegation had asked for its opinion on the implementation of the Convention in a case where a foreign national, who had enjoyed immunity from prosecution in his own country although he could have been held responsible for acts of torture, had visited the Netherlands. It was interesting to note that the international political and legal situation had taken a turn for the better in the meantime and that the same individual, although he had eventually been sent home after being held for a long period in the United Kingdom, would no longer be immune from prosecution under international human rights law. As far as the prosecution of alleged torturers was concerned, a special team for the identification and prosecution of war criminals had been active in the Netherlands since 1999. Composed of a public prosecutor, eight detectives and support staff, the team investigated war crimes, which could consist of acts of torture as defined by the Convention. The public prosecutor on the team was a member of the delegation and would reply to any questions on the prosecution of acts of torture that the Committee wished to raise. Article 1 F of the Convention relating to the Status of Refugees was particularly important for the role of the public prosecutor, since it stipulated that the provisions of the Convention relating to the Status of Refugees would not apply to any person with respect to whom there were serious reasons for considering that he had committed a crime against peace or a crime against humanity. That meant, in practice, that the persons to whom the article applied could be refused asylum. Responsibility for the application of article 1 F was assigned to a unit of the Immigration and Naturalization Service, whose specialized staff received ample training in fields such as humanitarian law. An important question in that regard related to the consequences of the application of article 1 F for the persons concerned, since the Netherlands was bound, by virtue of the principle aut dedere aut judicare, either to extradite or to prosecute. The public prosecutor was informed of all cases to which article 1 F was applicable and it was left to his or her discretion whether or not to prosecute persons covered by article 1 F in the light of the files submitted by the Immigration and Naturalization Service. The Netherlands delegation would gladly answer any questions that the members of the Committee wished to raise.

6. The CHAIRMAN thanked the Netherlands delegation and invited the Committee to ask for information on the implementation of the Convention in the European part of the Kingdom of the Netherlands.

7. Mr. YU Mengjia (Country Rapporteur) noted that there was a wide range of information in the two reports on the three parts of the Kingdom of the Netherlands (CAT/C/44/Add.8 and CAT/C/44/Add.4), supplemented by core documents (HRI/CORE/1/Add.66, 67 and 68) and a very interesting oral introduction. The report as a whole provided a clear account of new developments since the submission of the preceding report on the implementation of articles 3, 6, 7, 10 and 14 of the Convention and was in conformity with the Committee's guidelines concerning the form and content of reports.

8. The first question that arose in connection with all reports was whether the Convention had been fully incorporated into domestic law. According to paragraph 247 of the core document concerning the European part of the Netherlands (HRI/CORE/1/Add.66), where international law offered greater protection than national law, it took precedence, and vice versa. Paragraph 248 of the same document stated that legislation was applied in a manner that accorded with international human rights instruments, but paragraph 251 stated that, pursuant to article 120 of the Constitution, it was the legislature and not the courts that had decision-making power where the constitutionality of a law was in doubt. He would welcome a detailed clarification of that provision.

9. With regard to articles 3, 6 and 7 of the Convention, the procedures for requesting asylum and refugee status as well as the expulsion procedure had been described in detail. The Committee had, however, received information that, following amendments to the Aliens Act, any application for asylum submitted by a person who was unable to produce official identification documents could be turned down. He invited the delegation to clarify that point.

10. The Committee naturally welcomed the establishment of a special national team to seek out war criminals and the introduction of training courses for Immigration and Naturalization Service officials, who were given instructions about appropriate behaviour towards traumatized victims. However, as training covered a wide range of activities, it would be useful to have information on types of training other than instructions for dealing with traumatized persons and especially on gender-specific programmes.

11. Lastly, with regard to ill-treatment, he had been interested to learn that some methods of restraint during detention had been prohibited, particularly the use of adhesive tape to prevent persons who were being expelled from crying out. In addition, the Committee had received allegations of police brutality and would welcome the delegation's comments on police violence during demonstrations in connection with a Council of Europe meeting in 1997 and on a large-scale police operation conducted in November 1999 in Rotterdam, during which a large number of demonstrators had been subjected to illegal body searches.

12. Ms. GAER (Alternate Country Rapporteur) thanked the Netherlands delegation for its oral introduction, which usefully supplemented the highly informative reports. When the previous report had been reviewed, the Committee had asked whether proceedings had been instituted against General Pinochet, who had paid a private visit to the Netherlands, in

connection with the torture for which he had been responsible in Chile. Many events involving the former Chilean dictator had occurred in the meantime, but it would be interesting to hear whether any proceedings and investigations had been initiated in practice. The Committee had also asked whether torture victims were compensated. Although information on that subject was given in paragraphs 41 to 47 of the report, the figures were not broken down by category of violation and it was difficult to form an idea of the number of cases in which compensation was awarded specifically to victims of torture.

13. With regard to the implementation of article 11 of the Convention, she had read with interest, in paragraph 31 of the report, the findings of the European Committee for the Prevention of Torture, which had visited the Netherlands in November 1997, and had been pleased to learn that the regional police forces had set up independent committees to monitor conditions in police cells and that all police forces were under a statutory obligation to set up a supervisory committee of that kind. She inquired about the composition of the supervisory committees and asked to which body they reported their findings.

14. As to article 13 of the Convention, she understood that measures had been taken to prevent a recurrence of the police brutality that had marred the European Summit in June 1997 and noted with interest (para. 33 of the report) that the National Ombudsman could assess the legitimacy of decisions taken by the police in particular cases. Another very welcome development was that steps had been taken to facilitate the filing of complaints and, as stated in paragraph 36, special efforts had been made to deploy women police officers for body searches of women. On the last point, she wished to know whether the use of women police officers was the general rule.

15. Although conditions in prisons had improved, the very harsh regime in high-security facilities and inter-prisoner violence remained subjects of concern. The Committee had been informed of a case in which a prisoner had died following a fight in circumstances that were somewhat surprising, since four of five wardens had reportedly stood idly by during the fight, having been instructed to refrain from intervening between prisoners because it could prove dangerous. She would appreciate any clarification that could be provided.

16. Mr. YAKOVLEV thanked the Netherlands delegation for its oral introduction. Having taken note of the report under consideration and the second periodic report (CAT/C/25/Add.1), he requested further details about the Act implementing the Convention mentioned in paragraphs 24 and 25 of the second periodic report. It was unusual for States to enact a law of that kind and he wished to know what place it occupied in the State party's criminal legislation. For example, could it be invoked directly in proceedings for abuse of official authority or an act of torture?

17. The CHAIRMAN said that he would analyse the difference of opinion between the State party and the Committee about the implementation of rule 108, paragraph 9, of the rules of procedure, pursuant to which the Committee requested States parties to stay expulsion in cases where it was considering a communication whose author was in danger of being subjected to torture if returned to his or her country. The disagreement was all the more regrettable in view of the fact that the Committee, and he himself personally, acknowledged the commitment of the Netherlands to the ideals and the terms of the Convention. Of course, the countries in the

world that received the most applications for asylum were those that defended the aims of the Convention and the Netherlands was one of them. Persons applying for refugee status would inevitably have their requests turned down and would have recourse to every remedy available, whether domestic or international, to have that decision reversed. But it was evident from article 3 of the Convention and rule 108 of the rules of procedure, which regulated its application, that no analogy could be drawn between the human rights procedure established by the United Nations and domestic procedures, whether in a civil-law or a common-law country. If the domestic bodies in a State party that were responsible for ruling on the admissibility of an application for asylum determined that the application was "manifestly unfounded", the procedure ended there because of what would, in the Committee's procedure, constitute an "abuse of the right of submission" of a communication. That kind of abuse was covered by article 22, paragraph 2, of the Convention, which specified as grounds of inadmissibility of a communication, inter alia, anonymity or an application that the Committee considered "to be an abuse of the right of submission" of communications. That was where the views of the State party and the Committee diverged. When the State party considered that an application was "manifestly unfounded", it simply turned it down. The Committee, on the other hand, very seldom found, at the stage of admissibility of the communication, i.e. at the point when it considered the formal requirements, that an application constituted an abuse of the right of submission of communications. The Committee appointed a rapporteur to examine the whole file and it was extremely unusual for that in-depth examination of the evidence to lead to a finding that the allegation was totally unfounded. In the case of torture and ill-treatment, the Committee could not afford to take the slightest risk: if, as in almost all cases, the communication contained some facts that warranted consideration of the case on the merits, the Rapporteur would, as he was required to do, request the State party to take the interim measures provided for in rule 108 of the rules of procedure, which invariably, in the case of article 3, involved a stay of execution of the decision to expel. It would be completely illogical and irrational to proceed otherwise. Expressing the hope that he had convinced the Netherlands delegation, he invited the representatives of the Netherlands Antilles to introduce the report on that part of the Netherlands.

18. Mrs. de BODE-OLTON (Netherlands Antilles) said that the Antillean Government was committed to using every means to safeguard the basic rights and freedoms of all individuals in general and the rights of persons in custody in particular. Acts of torture under article 1 of the Convention were now explicitly defined as a separate offence in national legislation; attempted torture was also qualified as an offence. In recent years, additional efforts had been made to correct unfavourable conditions of detention in Curaçao prison. Despite the improvements made, the situation in Koraal Specht correctional facility continued to be a matter of concern and to be discussed not only by the Government, but also by external authorities. Since 1994, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited the Netherlands Antilles twice and had expressed concern about overcrowding, general conditions of detention and the problem of violence between prisoners in Koraal Specht prison. In October 1998, the Minister of Justice had held a meeting with the President of the European Committee, who had wanted to review the implementation of measures in Koraal Specht prison in the light of earlier recommendations by the Committee and to establish a clear timetable with the Government for the adoption of other required measures. The recommendations had related to conditions of detention and operations and had led to some radical changes. Following a decision by the Council of Ministers in 1998, the Government had

begun the process of reorganizing the structure of correctional facilities in order to guarantee inmates and prison officials more security. The reorganization was also designed to strengthen the legal infrastructure in order to ensure the effectiveness of the measures planned. As part of that strategy, the Government had concluded two agreements with private enterprises, one on construction and the other on the repair and maintenance of a new correctional facility, which should help to solve the prison overcrowding problem and improve inmates' conditions. As a result of other measures, 50 non-Dutch prisoners had been released after having served most of their sentences. Under a bilateral agreement concluded with a neighbouring country, prisoners could serve their sentences in their country of origin. In addition, the capacity of the semi-open prison regime had been strengthened, thereby reducing overcrowding by 20 per cent. Measures had been taken to combat staff absenteeism and to set up a social and medical team to monitor individual cases. The role of the Director of Koraal Specht prison had also been clarified and strengthened. There was now one Director-General responsible for prison administration as a whole and each facility had its own warden. The necessary legislation to give effect to the new provisions of the Prison System Ordinance had entered into force and the legal infrastructure of the prison system of the Netherlands Antilles was now fully in conformity with the human rights and fundamental freedoms provided for in the main international human rights instruments. Mention should also be made of the prison supervisory system which had been established in accordance with that legislation and was operated by a supervisory committee in charge of receiving inmates' complaints. It had been decided to appoint a coordinator and a support team to monitor activities organized for the benefit of prisoners. Additional prison staff had been recruited, health care had been reorganized and the nursing staff had been increased. The Government was considering the possibility of establishing the prison's own "mobile intervention unit" in order to replace the police mobile intervention unit. A special service had been set up to centralize the registration and follow-up of complaints by prisoners. A commission had been established to conduct a general inquiry into the integrity of the police forces. It had opened several telephone lines to enable the population to report crimes and other police conduct contrary to standards of integrity. As a consequence, a murder and other crimes in which police officers had allegedly taken part had been revealed and the persons responsible had been arrested and were awaiting trial. The National Institute for Police Training had been established in October 1999 to train all uniformed personnel working within the judicial system. It also trained prison officials.

19. Since her delegation could not focus on all areas in which interesting developments had taken place, it looked forward to answering the questions of the members of the Committee and would welcome their recommendations.

20. Mr. YU Mengjia (Country Rapporteur) noted with satisfaction that the Government of the Netherlands Antilles had taken many measures to improve the infrastructure of the country's prison system and to give effect to the recommendations made by the Committee against Torture and by the European Committee for the Prevention of Torture. He also welcomed the entry into force on 1 October 1997 of the Revised Code of Criminal Procedure. He nevertheless regretted the fact that allegations continued to be made about poor prison conditions, prison overcrowding and frequent outbreaks of violence in prison, including the August 1997 rioting referred to in paragraph 27 of the report. He noted that, in 1994, the Minister of Justice had decided to establish a commission to consider complaints of brutality and that a law establishing and containing the regulations relating to the National Investigation Department had been adopted

in May 1994. That commission had been operating since 1997 as an independent investigatory body. In 1995, the Government of the Netherlands Antilles had decided to punish torture as a separate crime rather than as the crime of assault and serious violence. Various measures had been taken to improve the training of prison staff in cooperation with NGOs, but those measures were still very limited because of the lack of resources. The Committee would like to know the implications of the statement in paragraph 40 of the report that "The mere fact that torture is a very serious offence which arouses widespread indignation and concern is not in itself a sufficient justification for application of the principle of universality".

21. Ms. GAER (Alternate Country Rapporteur), referring to article 11 of the Convention, said that she would like further information on the functioning of the independent board of visitors for prisons and remand centres and on how visits took place, how many there were and what deterrent effect they had.

22. With regard to articles 12 and 13 of the Convention, it would be interesting to know what measures the Government had taken to facilitate the procedure by which prisoners could file complaints. Although the Government was making efforts to comply with the recommendations of the Committee against Torture and the European Committee for the Prevention of Torture, there was still a great deal to be done. She welcomed the appointment of a director-general of prison administration and asked about the criteria for his appointment and whether he made visits to prisons. It would also be useful to have information on how prisoners were separated, as well as further information on sexual violence in prisons, the measures taken to deal with that problem and the confidential nature of the measures. She requested data on the prison population disaggregated by sex, race and ethnic group and according to the proportion of foreigners. In addition, she wished to know whether it was true, as indicated in the report of the European Committee for the Prevention of Torture, that electric batons were used in prisons.

23. The CHAIRMAN invited the members of the Committee to ask questions of the delegation of the Netherlands Antilles.

24. Mr. EL MASRY said that he would like further information on the referendum organized in the Netherlands Antilles, as referred to in paragraph 13 of the core document (HRI/CORE/1/Add.67), the date of the referendum, the results and possible participation by the United Nations. He asked whether the referendum had been based on the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)).

25. Mr. RASMUSSEN said that, during his visit to the Netherlands Antilles in 1997, the European Committee for the Prevention of Torture had received many complaints about the mobile intervention unit, which allegedly carried out frequent raids in prisons and treated prisoners very brutally. In the State party's oral introduction, it had been indicated that the authorities intended to deploy such a unit in each prison at all times. In relations between prison guards and prisoners, there was no room for such a unit. What comment could the State party make in that regard? Inter-prisoner violence was another matter of concern. In the part of the report on the Netherlands Antilles, it was indicated that incidents of that kind were rare, whereas the conclusions of the European Committee for the Prevention of Torture following its visit to the region in 1997 referred to serious cases of inter-prisoner violence, including 13 in the month

preceding the Committee's visit. Information and detailed statistics on those incidents would be welcome. The European Committee for the Prevention of Torture had also referred to the use, in a police station in Rio Canario, of an electric baton that could discharge 150,000 volts. The woman prisoner who had informed the Committee still bore the scars and, fearing that any action she might take would be prejudicial to her during her trial, she had decided not to file a complaint and the prosecutor's office had therefore decided not to conduct an investigation. However, the Curaçao Chief of Police had issued an order expressly prohibiting the use of electric batons. In view of the seriousness of the case, it could well be asked why the authorities had not conducted an investigation. Could the State party give assurances that electric batons were no longer used in places where prisoners were interrogated?

26. The 1994 report by the European Committee for the Prevention of Torture referred to many complaints of police brutality. Statistics on those complaints would be welcome. It would also be interesting to know the results of the proceedings that had been instituted. In its oral introduction, the State party had said that Koraal Specht prison was to become private. The Committee would like to be assured that the persons being detained in that prison would continue to be the responsibility of the State.

27. The CHAIRMAN said that he would like to be sure that, even if prisons were privatized, the State party would continue to fulfil all its obligations under the provisions of the Convention.

28. Mr. DUMORÉ (Netherlands), introducing the part of the report of the Kingdom of the Netherlands dealing with Aruba, said that it had been prepared by the Aruba Intergovernmental Human Rights Committee in accordance with the guidelines adopted by the Committee against Torture. A law implementing the Convention, defining torture as a separate criminal offence corresponding to the definition contained in article 1 of the Convention and providing for universal jurisdiction had entered into force on 22 June 1999. A new Code of Criminal Procedure for Aruba and the Netherlands Antilles had entered into force on 1 October 1997. It had repealed several outdated regulations on the execution of sentences and had greatly improved the rights of suspects, guaranteeing them the assistance of a lawyer from the moment of initial contact with the criminal justice authorities. That provided a strong safeguard against any arbitrary measure. The new Code had also made the application of constraints against a suspect in the course of a criminal proceeding the subject of precise rules. Henceforth, any person who had been subjected to the unlawful application of pre-trial constraints could claim compensation.

29. He informed the Committee that plans had been drawn up for the extension of the Aruba Penitentiary (KIA) in September 1998. They were designed to solve the problem of overcrowding and to remove structural defects in order to improve safety. The Government was now looking into ways to finance them.

30. In reply to the concerns expressed by the Committee during the consideration of the second periodic report of the Netherlands, the authorities of Aruba drew attention to the new regime for the maximum length of pre-trial detention applicable under the new Code of Criminal Procedure. Copies of the text describing the regime were available to the members of the Committee. The 10-day period during which a person could be held in police custody had not been shortened, but a suspect now had the right to be brought before a judge within three days of

his arrest. If the suspect was remanded in custody, the lawfulness of his detention was regularly checked. Since the Code did not prevent the question of practices contrary to the Convention from being raised during the hearing, detention was judicially supervised both in police cells and in a remand centre. The Prosecution Department's policy was, moreover, to reduce the length of pre-trial detention and to replace short custodial sentences by community service.

31. In conclusion, the Government of Aruba informed the Committee that it was not aware of any allegations of ill-treatment or torture either from persons in police custody or from persons in prison. It would continue to adopt all the necessary measures to guarantee the basic rights of every citizen, as provided for in the Constitution and in several human rights instruments in force for Aruba.

32. Mr. YU Mengjia (Country Rapporteur) said that the oral introduction on behalf of the delegation of Aruba had answered some of the questions he had wanted to ask. The new Code of Criminal Procedure which had entered into force on 1 October 1997 was a very important landmark in the Aruban system of law. The report showed that the Government of Aruba was aware that its legislation on the punishment of torture was inadequate. The Committee had already drawn attention to that shortcoming in its concluding observations and recommendations on the preceding report of the Kingdom of the Netherlands. In that connection, paragraph 68 of the report stated that a bill to implement the Convention was now being debated in the Aruban Parliament. It was therefore to be hoped that the process of incorporating the provisions of the Convention into internal law would be speeded up.

33. Paragraph 75 of the report drew attention to a bill to modernize detention law which was to be submitted shortly to the Aruban Parliament. The text did not expressly prohibit torture, which was defined in the report as a criminal offence under the general provisions on torture contained in the bill to implement the Convention. He was not convinced that that approach, which implied that the Government of Aruba considered it superfluous to incorporate an explicit ban on torture in the bill, was appropriate.

34. During the consideration of the part of the preceding report of the Kingdom of the Netherlands dealing with Aruba, the Committee had deplored prison conditions. Information on developments in the situation since then would be welcome.

35. With regard to the criminal responsibility of persons who committed acts of torture, the articles of the Code of Criminal Procedure of Aruba referred to in paragraph 86 of the report were obviously contrary to the Convention and were therefore a matter of concern. According to those articles, a person who committed a criminal offence while obeying orders given by a competent authority was not punishable. In addition, paragraphs 86 and 87 of the report contradicted one another. Explanations in that regard would be welcome. The words "such acts shall, if they are achieving their intended aim, be construed as torture and carry a term of imprisonment not exceeding 15 years" at the end of article 1, paragraph 1, of the National Ordinance on the Convention against Torture (annex to the report, p. 48) appeared to be in conflict with the Convention. It would be interesting to know the Aruban authorities' opinion.

36. Ms. GAER (Alternate Country Rapporteur) said she regretted that the State party had not provided enough statistics in its oral introduction. She would, for example, like information on

the sex, ethnic origin and nationality of the persons detained in Aruba Penitentiary (KIA) or in police custody. According to the report, broad guarantees protected prisoners against possible abuses by prison staff and no allegation of brutality had been received. It would be interesting to know how that system of guarantees operated and whether prisoners were sufficiently aware of the rights it gave them.

37. Paragraph 163 indicated that every police officer who employed force in the course of his duties must immediately report to his superior or department head, who must then inform the public prosecutor. That system seemed very good in theory, but what happened in practice? She would particularly like details about the reports, if any, which had already been submitted to the public prosecutor and explanations about the results of the procedure.

38. The analysis of the question of the anonymity of witnesses in paragraphs 173 to 185 was extremely interesting, but she would like to know the circumstances in which that practice had been established. Had anonymous statements already been made in Aruba? Was that type of testimony used in other parts of the Kingdom and what was the situation with regard to the rights of the accused?

39. In connection with article 16 of the Convention, the report of the United States Department of State on the Netherlands Antilles and Aruba referred to many cases of police brutality and substandard prison conditions, although commissions had been set up to receive victims' complaints of ill-treatment and programmes had been established to make the members of the police forces aware of their obligations and responsibilities. According to the information provided by the State party, however, the authorities of Aruba had not received any allegation of brutality in places of detention. It was therefore open to question whether the programmes established had been successful. The report also indicated that there was strict supervision in prisons in order to detect possible cases of sexual violence. In that connection as well, it would be interesting to know what guarantees were enjoyed by persons who wanted to file a complaint and whether persons responsible for acts of sexual violence had already been punished.

40. The CHAIRMAN welcomed the legislative initiatives taken by the authorities of Aruba in order to make torture a separate offence corresponding to the definition contained in article 1 of the Convention, even though the terminology used was different and he was not convinced that all elements of the definition had been taken into account. He invited the delegation of the Netherlands to return to reply to the oral questions to be asked by the members of the Committee.

41. The Netherlands delegation withdrew.

The public part of the meeting rose at noon.

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Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 427th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 May 2000, at 3 p.m.

Chairman: Mr. Burns

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of the United States of America (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.427/Add.1.

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GE.00-42145 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of the United States of America (CAT/C/28/Add.5) (continued)

1. At the invitation of the Chairman, Mr. Koh and Mr. Yeomans (United States of America) took places at the Committee table.

2. The CHAIRMAN invited the United States delegation to present its replies to questions raised by members of the Committee.

3. Mr. KOH (United States of America), explaining why the report had been delayed, said the task of assembling a comprehensive report for a country of 267 million people required extraordinary coordination among many agencies and governmental bodies. The report dealt with the national Government, the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Marianas and American Samoa, as well as the activities of the Departments of State, Justice, Defense, Labor, Health and Human Services, the Bureau of Prisons, and the Immigration and Naturalization Service, among others. Input had also been sought from non-governmental organizations (NGOs) and concerned individuals. President Clinton had, in fact, promulgated an executive order in 1998 expressly to create an inter-agency working group to foster better coordination of that process. The report had been completed not long after the creation of the inter-agency group; his Government expected that future reports would be more expeditiously produced.

4. Mr. YEOMANS (United States of America) said that medical attention was routinely provided to any person in need of it at the time of arrest, including access to a physician if warranted, a right guaranteed under the due process clauses of the Fifth and Fourteenth Amendments to the Constitution. In addition, judicial interpretation of the Eighth Amendment provided that judicial officers could not exhibit "deliberate indifference" to the serious needs of a convicted prisoner, by either denying or delaying access to medical care or interfering with treatment. All pre-trial detainees also had the right, under the First and Fourth Amendments, to communicate with friends, relatives, attorneys and public officials by means of visits, correspondence and telephone calls, subject to reasonable limitations imposed by security needs. The Fifth and Sixth Amendments also gave pre-trial detainees the right to contact a lawyer.

5. Under the federal system, the Federal Bureau of Investigation observed a strict policy of having parents present whenever interviewing juveniles.

6. The United States Government believed there was no inconsistency between its understanding of the definition of torture and that contained in article 1 of the Convention. Where official mistreatment resulted solely in mental suffering, it did constitute torture provided it involved prolonged mental harm and was caused by or resulted from four sources: intentional or threatened infliction of severe physical pain or suffering; the administration or threatened administration of mind-altering substances or other procedures calculated to disrupt the senses or the personality; the imminent threat of death; or the imminent threat that another person would

be subjected to death, severe physical pain or suffering or the administration of mind-altering substances or other procedures calculated to disrupt the senses or the personality. That understanding did not modify the meaning of article 1, but rather clarified it, adding the precision required by the United States domestic law.

7. As paragraphs 72 to 93 of the report explained, it would be difficult for the United States to maintain a single comprehensive collation of statistics on torture because criminal justice authority was widely diffused between the federal Government, the 50 States and the various territories. However, to address the lack of reliable information on incidents of the use of excessive force by police, in 1994 Congress had mandated the Attorney-General to collect data and to produce a yearly report; he had in turn requested the Department of Justice and the National Institute of Justice to issue periodic reports on police use of force. Other sources of statistical information included the annual report on crime of the Federal Bureau of Investigation, which was based on a survey of 16,000 law enforcement agencies throughout the country; the national crime victimization survey of the Department of Justice; and the annual report of the Parole Commission. In addition, each State had its own crime reporting and criminal justice information center or records bureau. Further information could be obtained from the National Center for State Courts, the Census Bureau, and the Bureau of Justice Statistics. The Government would assess the feasibility of merging those databases into a single set of statistics on torture.

8. Mr. KOH (United States of America) said that the United States declaration that certain articles of the Convention were non-self-executing simply established how those articles would be implemented in domestic law and did not limit United States obligations. The Convention could not, in and of itself, provide a private cause of action in United States courts. Nothing in the Convention required States parties to make it self-executing under their domestic law; indeed, articles 2 and 4 left it to States parties to determine how best to implement their obligations. The question was not whether the Convention was self-executing, but whether the provisions of the Convention were fully guaranteed by the domestic law.

9. As to why the United States applied the notion of "more likely than not" to its interpretation of article 3, at the time of its ratification of the Convention against Torture the domestic law had provided that a person could not be expelled or returned to a State where his life or freedom would be threatened on a number of discriminatory grounds, a provision derived from article 33 of the Convention relating to the Status of Refugees. The Supreme Court had interpreted that provision as meaning that a person could not be deported to a country where it was "more likely than not" that he would be persecuted. Since the Convention against Torture extended the prohibition on deportation to all cases of torture, even those not involving persecution, the "more likely than not" understanding ensured that protection under article 3 would be applied in a manner consistent with existing law. The Chairman had suggested that, by analogy to common law on tort, the issue should be whether there was a "real risk" of torture, which might be less than a probability. But the evidentiary standard for proving a common law tort was also "more likely than not".

10. As to how the United States addressed questions of command and control, the Convention as the United States construed it clearly applied to torture committed in the context of governmental authority, and excluded torture as a private act.

11. The United States had criminal jurisdiction over the crime of torture committed abroad by any official, irrespective of nationality, if the perpetrator was later found in the country. The United States Code provided that if a person committed or attempted to commit torture, he was punishable by imprisonment for not more than 20 years, and that if death resulted he was punishable by death or by imprisonment for any term of years or life, whether he was a national of the United States, or present in the United States regardless of his nationality or that of the victim. Since the 1980 landmark case of Filartiga v. Pena-Irala, the federal courts had heard suits brought by alien plaintiffs against alien torturers for acts of torture committed outside the United States.

12. The Government apologized to Sir Nigel Rodley, the Special Rapporteur on Torture, for its delay in replying to his communications. It fully supported his admirable work, and was pleased to report that it had completed a detailed response to his communication of November 1998, which included replies to all his earlier communications. Those replies were being transmitted to the Special Rapporteur, and would also be provided to the Committee. In addition, it was preparing a reply to the Special Rapporteur's communication of November 1999.

13. The Department of Justice had sought stringent limitations on the use of electro-shock weapons in law enforcement agencies and corrections facilities, as well as increased training for officers. Their use did not violate constitutional standards per se. Wielded appropriately, stun belts and stun guns could be effective tools when the use of force was warranted during detention or arrest, and could reduce violence and protect bystanders by serving as a non-lethal alternative to deadly force. The Bureau of Prisons maintained 51 custody control belts throughout the country, for use only: during the transport of maximum custody inmates; to prevent escape or to prevent loss of life or grievous bodily harm; if conventional restraints were insufficient during the transport of an inmate; and if the inmate had no preclusive medical condition. To date, no incident had occurred in which a custody control belt had been activated.

14. Federal criminal prosecutions were only part of United States efforts to combat police misconduct. State prosecutors were also attempting to do so through criminal prosecutions and improved oversight. Local police were working to improve accountability through training, enhanced discipline, citizen complaint procedures, and improved community communications. The Department of Justice was investigating several hundred allegations of misconduct, and had, for example, successfully prosecuted the officers involved in the beating of Rodney King, who had been acquitted in State proceedings. More than 300 law enforcement officers had been criminally prosecuted since 1993 for violations of constitutional rights. In addition, the Department of Justice brought civil suits alleging patterns of misconduct such as use of excessive force, failure to train and discipline officers adequately, and racial profiling, and was conducting investigations of police departments, including the New York Police Department's Street Crime Unit, which had been involved in the shooting of Mr. Amadou Diallo. It was also engaged in employment discrimination litigation, with a view to changing the racial and gender composition of the nation's law enforcement departments and thus improving community relations, and in promoting community-oriented policing.

15. Mr. KOH (United States of America) said that Mr. Ricardo Anderson Kohatsu had been permitted to return to Peru following a trip to the United States because the Government of Peru

had asserted a claim of immunity from arrest on his behalf on the basis of the 1975 agreement between the United States and the Organization of American States on privileges and immunities of delegations.

16. Federal legislation on torture was a historical fact; under article 1 of the Constitution, Congress had the power to punish offences against the law of nations. It had enacted the legislation establishing criminal jurisdiction over torturers present in the United States who had committed acts of torture abroad, as well as the Torture Victims Protection Act of 1992 and the Torture Victims Relief Act of 1998, which established remedies for persons tortured abroad and provided relief to victims of torture living in the United States.

17. The United States Government had never received any request for the extradition of Mr. Emmanuel Constant from the Government of Haiti or any other Government. It was aware of reports that he had committed torture in Haiti and had no wish to harbour torturers. Apparently, however, since the acts of torture allegedly committed by Mr. Constant had occurred before the enactment of the relevant law in 1994, the constitutional prohibition against the retroactive application of criminal statutes could well bar his prosecution.

18. To the best of the Government's knowledge, it had received no requests for the extradition of a person for the offence of torture since the submission of its report in October 1999.

19. As far as the Government was aware, training in recognizing the indicia of torture and in techniques for the treatment of victims was not a required part of any medical school curriculum. Medical schools did, however, offer courses in health care and human rights, which covered related matters. In addition, NGOs such as the Center for Victims of Torture, Médecins du Monde and Physicians for Human Rights assisted in providing instruction in those areas. Both the New York Medical Center and the Montefiore Medical Center in New York City had clinics for torture survivors, which taught medical students and doctors how to diagnose and treat victims. Those efforts, which the Government applauded, might be laying the groundwork for a standard curriculum.

20. Mr. YEOMANS (United States of America) said that the Supreme Court accorded juveniles the same safeguards against self-incrimination that it provided to adults. As with any statement by a witness admitted in a criminal case, an inquiry would be made into the voluntariness of a juvenile's statement, taking into account his age and maturity. As a condition for receiving federal grants or funds, States must hold juveniles involved in judicial proceedings separately from adults. States therefore generally separated juveniles from adults both in pre-trial facilities and in prison.

21. Under the federal system, juveniles were never housed with adult offenders. Although in limited circumstances they could be convicted of federal offences, they were generally placed in facilities managed by State or local agencies or private corrections firms with a view to maintaining close family ties. Only one of the federal prisons, that of Guyanabo, Puerto Rico, held juvenile offenders; they were strictly separated from adults. The Immigration and Naturalization Service also housed juveniles separately from adults, in facilities licensed at the local, State, or federal level and inspected annually to ensure their compliance with regulations.

22. Under the laws of some States, persons aged 16 and over could be sentenced to death when the nature of the crime required their being tried as adults. Such persons might sometimes be held on death row after they had been tried, convicted and sentenced to death. However, under United States law, the nature of their conduct warranted a determination that they had clearly reached the age of majority in advance of their eighteenth birthday and should therefore be tried, convicted and sentenced as adults.

23. Restraint devices were used in jails and prisons not as punishment but to keep inmates from hurting themselves or others, when less restrictive means of control had failed. They were also used in hospitals and nursing homes for patient safety reasons. Unfortunately, it had been found that certain jails and prisons were using restraint chairs and four or five-point restraint on a bed for an excessive time or when other less restrictive methods of preventing harm had not been attempted. The Department of Justice condemned that practice and had sought to remedy it. The Constitution did not permit restraint as a means of punishment or for interrogation purposes. Prior to adopting the use of restraint chairs, the Federal Bureau of Investigation had evaluated their effectiveness, and had found them to be beneficial for short-term transport. The restraint chair was not intended for routine use in prison hospital or special housing units, and must not be used in lieu of progressive or four-point restraints.

24. The Government had no knowledge of any instances in which shackles had been used on women prisoners in labour, although it was aware of the allegations made by Amnesty International. If specific, reliable information was provided, it would be eager to investigate such incidents.

25. The Government acknowledged reports that restraint chairs, improperly used, had caused deaths in health-care facilities; they might also have caused deaths in jails and prisons. It was energetically seeking full information on such incidents. In 1999, a Senate subcommittee had held hearings on that subject, and efforts were under way to improve the use of restraints in federally-funded health-care facilities.

26. It was unconstitutional to interrogate persons in restraint chairs, and the Government would take action to stop such a practice if it occurred. To its knowledge, however, restraint chairs had not been used for that purpose. Investigations had shown that some juvenile facilities were using restraint chairs. Remedial agreements drawn up with such facilities required that such devices should never be used as punishment, but only to control youths who were endangering themselves or others, when other less restrictive methods had failed. Youths held in restraint chairs must be constantly monitored, frequently checked by supervisors, and removed as soon as they had gained control of their behaviour.

27. The "supermax" prison facilities were a necessity in United States law enforcement, and their use was strictly controlled. Prisoners in such facilities were screened and monitored for mental illness, provided with opportunity for exercise, and transferred to less structured settings where appropriate. One such prison was the Administrative Maximum Security Institution (ADX) in Florence, Colorado, which contributed to safe operations in other prisons by concentrating in one facility prisoners posing very serious security and safety risks. Most inmates were transferred there from other institutions because of their dangerous behaviour, including, in particular, murder or attempted murder of another inmate; serious assaults on staff

or inmates; and escape or attempted escape. The Bureau of Prisons reserved its discretion to ensure public safety by placing inmates in the ADX. Recent domestic and international terrorism convictions had resulted in court recommendations for such placement; the Bureau considered such recommendations, but made its determinations on the basis of the criteria described. Before an inmate was committed to ADX, other high security institutions were always considered.

28. A referral for ADX designation must include a number of elements including memoranda between the warden and the appropriate Regional Director, copies of all disciplinary reports and a recent psychiatric or mental health evaluation. Inmates diagnosed as suffering from serious psychiatric illnesses were not referred for placement. Most inmates were in fact returned to the general population at penitentiaries other than ADX Florence and participated in a stratified housing programme allowing them to function in gradually less structured environments as they demonstrated more responsible behaviour. Supermax facilities operated by State correctional agencies were monitored by the Civil Rights Division of the United States Department of Justice and one such investigation had resulted in the institution of remedial measures at a Supermax facility in Maryland.

29. As to whether the United States intended to create independent complaint review mechanisms, he said that such mechanisms were unnecessary and would needlessly duplicate the work of bodies such as the Federal Bureau of Prisons and the National Institute of Corrections. State and federal courts had also engaged in extensive oversight in prisons in response to lawsuits brought by government agencies and indeed inmates.

30. Turning to the subject of the Prison Litigation Reform Act (PLRA), he said that a physical injury was a precondition for an award of monetary relief for unconstitutional conditions of confinement in a federal lawsuit filed by an inmate. However, prisoners who had suffered non-physical injuries could still sue in federal courts for injunctions requiring, for example, a smoke-free environment.

31. All prisons had prisoner grievance mechanisms. A prisoner was required to exhaust all administrative remedies before bringing his or her case to the federal court.

32. Mr. KOH (United States of America) endorsed the statement made by Mr. Camara that, in accordance with the Vienna Convention on the Law of Treaties, a State party to a treaty could not appeal to internal difficulties to excuse its failure to fulfil international obligations that it had assumed. The reference to federalism made in the United States general reservation to the Convention was not intended to exempt it from ensuring that both State and federal law complied with its obligations under the Convention. Under its federalist system of government, powers not delegated to the Government were expressly reserved for the States and people under the Tenth Amendment to the Constitution. The Government could therefore establish and enforce uniform standards for the respect of the right to be free from torture and cruel and inhuman punishment, including possible direct invalidation of any offending laws at the State level.

33. It had been argued by Mr. Camara that the only permissible reservation to the Convention was pursuant to article 28, i.e. with respect to the competence of the Committee to receive State-to-State complaints under article 20. However, the United States believed that under the Vienna Convention on the Law of Treaties and the Permanent Court of International Justice's Advisory Opinion Concerning Reservations to the Genocide Convention, a State party could attach a condition to its ratification of a multilateral treaty unless the instrument itself prohibited reservations or such a condition would defeat the object and purpose of the treaty, as viewed by the parties to the multilateral convention. The Convention Against Torture did not prohibit reservations and no State party had adopted Mr. Camara's interpretation.

34. Mr. YEOMANS (United States of America), referring to the subject of asylum-seekers, said that the Immigration and Naturalization Service (INS) tried to ensure that all aliens in detention were treated humanely. The INS was sensitive to the special circumstances of legitimate asylum-seekers and favoured the release of any alien found to have a credible fear of persecution, provided that his needs would be met following release.

35. The INS sought to house all detained asylum-seekers in INS-run facilities, separate from criminal aliens, or, where no bed space was available in an environment free from harassment by others with a history of violence. A classification system was used taking into account relevant information and, together with proper supervision and special housing, had proved effective.

36. When an asylum-seeker was released, his freedom of movement was generally not restricted, except that he was required to keep the INS informed of his whereabouts and to comply with any conditions placed on his release, such as periodic reporting to the INS. A work permit could not, however, be granted, until he was granted asylum, or until 180 days had passed without a decision being taken on the asylum application, a provision adopted in 1994 to reduce the number of bogus asylum applications.

37. Prisons operated by private companies were in no way isolated from scrutiny under the federal Constitution. State and local contracting agencies were ultimately accountable for conditions in institutions housing individuals in the State's legal custody. A number of the Civil Rights Division's cases pursued to protect the constitutional right of prisoners had involved private providers housing individuals in the custody of States or local subdivisions. In short, a corporation operating a prison facility under a contract with the State was subject to the same liabilities under federal law as a public facility.

38. Responding to a question raised by Mr. Yu Mengjia, he said that in the United States chain gangs were not unconstitutional per se. However, their use was rare and was mostly for highway clean-up and maintenance projects. In order to determine whether the particular use of a chain-gang violated the Constitution, it would be necessary to review the kind of work done by prisoners on chain gangs so as to ascertain whether the conditions complied with those required by the Eighth Amendment's protection against cruel or unusual punishment.

39. Mr. KOH (United States of America) noted that under article 16 (1) of the Convention States parties undertook to prevent acts of cruel, inhuman or degrading treatment or punishment.

Article 16 (2) further specified that the provisions of the Convention did not prejudice those of other international or domestic instruments prohibiting such treatment or punishment, or relating to extradition or expulsion. Under certain circumstances a person arriving in the United States as a child could be subject to removal many years later if he had not become a United States citizen and if, for example, he engaged in criminal activities that made him deportable. That stipulation did not violate the country's obligations assumed under either of the provisions of the article. The INS took steps to ensure that any removal process was administered in a humane fashion. In addition, an alien could seek protection from removal under both article 3 of the Convention against Torture and article 33 of the Convention relating to the Status of Refugees.

40. It had been asserted that the United States failed to identify fear of torture as a reason for not returning a person to his country of origin in light of the requirement under the Convention. In fact, the INS had adopted a comprehensive interim administrative process to assess whether article 3 of the Convention was applicable to individual cases of aliens subject to removal. If there was reason to believe that an alien would be tortured in a particular country, the INS would consider whether article 3 prohibited removal to that country. In addition, the INS worked with the Office of the United Nations High Commissioner for Refugees (UNHCR) to develop an informal process whereby that agency could bring to the Government's attention cases which it believed raised issues under article 3.

41. In that regard, President Clinton had signed into law a statute requiring the heads of appropriate agencies to prescribe regulations to implement the obligations of the United States under article 3 of the Convention Against Torture, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention. An interim rule prescribing such regulations had also been published by the Department of Justice.

42. Mr. YEOMANS (United States of America) said that the Anti-Terrorism and Effective Death Penalty Act did not limit the ability of federal courts to remedy erroneous decisions of the State courts. Rather, it required such cases to be brought within 12 months of any one of a number of triggering events and no more than one habeas corpus challenge to be brought in the same case. However, a federal habeas corpus action could still be maintained if a State defendant could establish that there was a new rule of constitutional law which the Supreme Court had held to apply retroactively, or that the facts on which the action was predicated could not have been discovered earlier through the exercise of due diligence and provided clear and convincing evidence of actual innocence, or that the lower court had not given adequate consideration to the initial petition for habeas corpus.

43. As to whether special medical training was provided for doctors working in prisons, first, such doctors must be licensed to practise medicine in the State in which a facility was located. In addition, all federal prison staff received initial and, thereafter, annual training in recognition of victims of sexual assault and physical abuse. Physicians and other health care providers were

also required to receive training every six months in suicide prevention. A comprehensive orientation programme, consisting of a set of learning objectives, was scheduled for immediate implementation. The topics included: restraints and seclusion; suicide prevention; management of hunger strikes; body searches for contraband, and medical experimentation.

44. In the case of inmates who appeared to have been injured, an investigation into the cause of the injury was initiated by correctional staff. The inmate was seen by health care providers and a standard injury assessment form was completed. In many cases physicians were asked to provide an opinion as to the nature of the injury. The training for such evaluation was a combination of medical experience gained prior to prison employment and a heightened sensitivity to the types of injury seen among inmates.

45. Mr. KOH (United States of America) said that his delegation had done their utmost to be forthright and complete in their answers. They would be happy to provide clarification of any of the responses given and to answer additional questions.

46. The CHAIRMAN, referring back to his question as to whether field officers of the Central Intelligence Agency (CIA) were trained in interrogation methods, asked what oversight mechanisms were used to ensure that, in applying such methods, the officers fulfilled their obligations under the Convention. Referring to the case of the Peruvian official Ricardo Anderson Kohatsu, he asked whether the United States had not been in breach of its obligations under the Convention. Likewise, in the case of the Haitian citizen Emmanuel Constant, the delegation had stated that the NGO involved had misinterpreted the facts. It was true that no formal extradition request had been made by Haiti, but, even without such a request a State was obliged to investigate or prosecute a person who it had reasonable grounds to believe was guilty of acts of torture. Why had the matter not been pursued further?

47. Regarding prison inmates under the age of 18 who were considered to have reached the age of majority for the purposes of punishment for serious crimes, he asked why such a stipulation was made by United States law. Lastly, could the authorities be held responsible for the conduct of private companies entrusted with the running of prisons? In the light of the various interpretations made, did the authorities consider that, in creating such entities, the United States Government believed that it was no longer responsible for the actions of those bodies?

48. Mr. EL MASRY said that, with regard to the Prison Litigation Reform Act (PLRA), it appeared that the requirement for prisoners to show physical injury before receiving damages for mental and emotional injury was not fully consistent with the obligations under the Convention. Turning to the case of the Peruvian official, he gathered that the United States had concluded that its treaty obligation to the Organization of American States (OAS) required it to release the official. On the other hand, the country's obligations under the Convention (arts. 5, 6 and 7) required that the official should remain in custody. Had those conflicting treaty obligations been discussed within the national departments concerned?

49. Mr. RASMUSSEN said that overcrowding in prisons had caused a great deal of inter-prisoner violence. What plans did the prison authorities have to reduce it? Had any possible alternatives to imprisonment been considered?

50. Mr. YU Mengjia asked whether it was possible for the delegation to provide a written copy of its responses. He also wished to draw the delegation's attention to a newspaper article, originally published in the New York Times, relating to a woman who had been handcuffed while in labour.

51. Mr. KOH (United States of America), responding to the questions raised, said that the CIA had been the subject of intensive discussion in the 1970s and 1980s. The deliberations of the Church Committee had led to the enactment in 1980 of the Intelligence Oversight Act, designed to ensure that the CIA was subject to the rule of law in the same way as all other national agencies. The overall message that his delegation had sought to convey was that the treatment of individuals in State custody was fully governed by the rule of law and pre-established procedures. Thus any covert action on the part of the intelligence agencies must be reported to an oversight committee. Similar guarantees were provided by the Internal Advisory Oversight Board and the Foreign Surveillance Intelligence Unit. Lawsuits had also been brought against officials of the CIA. In general, even though the activities of the intelligence agencies were hidden from public view, they were nevertheless subject to statutory requirements. That fact had been proved by the "Iran Contra" affair.

52. With regard to the case of Ricardo Anderson Kohatsu, the United States was a party to a broad range of international treaties pertaining to general and specific diplomatic and other immunities and to a number of bilateral agreements concerning international organizations that had their headquarters in the United States, including the OAS. When a person officially accredited under one of those agreements asserted his or her privilege in opposition to a claim entered under the provisions of the Convention against Torture, the question of which should take precedence was a debatable point. On ratifying the Convention, the United States Government had indicated that its provisions would not supersede or abrogate existing treaty obligations. However, an inter-agency working group established by the President of the United States on 10 December 1998 to consider procedures for the full implementation of human rights treaties had been addressing the issue of how conflicting obligations could be reconciled in conformity with international law and would, it was hoped, reach productive conclusions.

53. With regard to the case of Emmanuel Constant, he was extremely concerned about any allegation that a Haitian torturer was being afforded refuge in the United States. However, no valid application for his extradition had been filed. Government officials were seriously considering what kind of action could be taken to remove or deport such individuals. The extent to which the Attorney-General, possibly in conjunction with the Secretary of State, could order the removal from the United States of somebody suspected of having committed substantial human rights violations was unclear. The issue was currently the subject of three legislative proposals before the United States Congress. At all events, he vigorously denied that failure to act indicated any lack of concern on the part of the authorities.

54. There was no circumstance in which a contract establishing private prison arrangements exempted those responsible from operating within the rule of law. The suggestion that the authorities, in a move designed to tackle the problem of overcrowding, were deliberately trying to sidestep the rule of law was totally unacceptable.

55. The Prison Litigation Reform Act was a relatively new statute and was currently the subject of proceedings in United States courts. It was quite possible that those courts would interpret its provisions in different ways. A specific question still to be addressed was whether it should be construed in the light of the country's international obligations.

56. He submitted that the report concerning handcuffed women detainees published in the Chinese press demonstrated that the United States media were an important mechanism for ensuring compliance with the country's international obligations. At the same time, the media and NGOs were held to high standards of accuracy. The authorities were reluctant to assume that everything published in the New York Times was incontestably true. Allegations had to be supported by factual evidence that could be investigated by law enforcement officials.

57. Mr. YEOMANS (United States of America), responding to the question concerning the housing of minors on death row, said that a number of State legislatures, which were the main sources of criminal legislation, had ruled that certain acts were so heinous that the perpetrator should be treated as an adult. Such a determination was not automatic. The defendant was generally brought before a judge, who decided in the light of the evidence whether it was appropriate in the circumstances to treat him or her as an adult. No person under 18 years of age had ever been executed.

58. While the Prison Litigation Reform Act required inmates to provide evidence of a prior physical injury to obtain damages, it did not impair their right to take the matter to court or to obtain comprehensive injunctive relief, and it in no way restricted State remedies, which might include the possibility of monetary compensation.

59. The Civil Rights Division of the Department of Justice and the Private Plaintiffs Bar had frequently challenged prison overcrowding. Enforcement action had been sought against some 3,000 institutions across the country. In the vast majority of those cases, the relationship between overcrowding and inter-inmate violence had been recognized. The importance of keeping inmates occupied in constructive activities had also been acknowledged. There were various proposals for alternatives to imprisonment and some had been discussed by the Congress. However, the most effective response for the time being was to tackle overcrowding wherever it led to violence.

60. Mr. KOH (United States of America) said that several Supreme Court and federal cases concerning overcrowding had been cited in the report, and the Civil Rights and Institutionalized Persons Act was designed to address the issue through the statutory authorities. The National Institute of Corrections had provided assistance to State and local authorities in that regard.

61. The CHAIRMAN, reverting to the Emmanuel Constant case, said that the Committee's jurisprudence was very clear: articles 5 to 8 of the Convention imposed an obligation on States parties to assume universal jurisdiction over torturers present in their territory, whether or not a request for extradition had been filed. Did the United States consider that it did not possess jurisdiction domestically to prosecute an individual who was alleged to have committed torture overseas and for whom no request for extradition had been made?

62. Mr. KOH (United States of America) said that three legislative proposals concerning the issue of whether an alleged torturer could be taken into custody and removed from the country were currently under consideration. As to whether an alleged torturer could be prosecuted, the date on which the Convention and its implementing legislation had come into force raised the issue of ex post facto prosecution in the case of Mr. Constant.

63. The CHAIRMAN thanked the delegation for a remarkably beneficial exchange of views and invited it to return on 15 May 2000 and hear the Committee's conclusions and recommendations on the report.

64. The delegation of the United States of America withdrew.

The public part of the meeting rose at 4.45 p.m.